

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL : MDL No. 2804
PRESCRIPTION OPIATE :
LITIGATION : Case No. 17-md-2804
:
APPLIES TO ALL CASES : Hon. Dan A. Polster
:
:

HIGHLY CONFIDENTIAL

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

- - - -

JANUARY 8, 2019

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VIDEOTAPED DEPOSITION OF GREGORY CARLSON,
taken pursuant to notice, was held at Marcus &
Shapira, One Oxford Center, 35th Floor, Pittsburgh,
Pennsylvania 15219, by and before Ann Medis,
Registered Professional Reporter and Notary Public in
and for the Commonwealth of Pennsylvania, on Tuesday,
January 8, 2019, commencing at 9:06 a.m.

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P R O C E E D I N G S

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MR. ROTTINGHAUS: We are now on the record. My name is Frank Stanek. I'm the videographer for Golkow Litigation Services. Today's date is January 8, 2019, and the time is 9:06 a.m.

This video deposition is being held in Pittsburgh, Pennsylvania, In Re: National Prescription Opiate Litigation, for the United States District Court, for the Northern District of Ohio, Eastern Division.

The deponent is Greg Carlson.

Will counsel please identify themselves.

MR. ROTTINGHAUS: Tom Rottinghaus on behalf of plaintiff.

MS. BOURIAT: Jennifer Bouriat on behalf of Cardinal.

MS. CHARLES: Amber Charles on behalf of McKesson.

MR. KOBRIN: Josh Kobrin, Marcus & Shapira, on behalf of HBC Service Company.

MR. WETZEL: Jeffrey Wetzel for Mr. Carlson personally.

MR. BARNES: Robert Barnes, Marcus &

1 Shapira, for Mr. Carlson.

2 MR. ROTTINGHAUS: Then do we have
3 anybody participating by telephone?

4 MR. MARKHAM: Chris Markham on behalf of
5 Walmart.

6 MS. RUSSO: Shana Russo on behalf of
7 Amerisource Bergen Drug Corporation, of Reed
8 Smith.

9 MS. GUTHRIE: Erica Guthrie of Arnold &
10 Porter on behalf of the Endo and Par defendants.

11 GREGORY CARLSON,
12 having been first duly sworn, was examined
13 and testified as follows:

14 EXAMINATION

15 BY MR. ROTTINGHAUS:

16 Q. Good morning, Mr. Carlson.

17 A. Good morning.

18 Q. My name is Tom Rottinghaus. We met
19 right before the deposition; correct?

20 A. Yes.

21 Q. Thank you for coming here today. You
22 understand you are here to give a deposition in a
23 case involving your involvement, I guess, at Giant
24 Eagle and HBC warehouse between, as I understand
25 it, 2007 and 2016?

1 A. Yes.

2 Q. I'm going to be asking you a series of
3 questions today about your involvement or your
4 capacity in those institutions. There are going
5 to be several documents we're going to talk about
6 as well. I've taken the liberty of marking a few
7 documents that we will be talking about that I
8 think you have in front of you.

9 You understand you've just taken an oath to
10 tell the truth?

11 A. Yes.

12 Q. And this is the same type of testimony
13 you would give as if you were in a courtroom;
14 correct?

15 A. Yes.

16 Q. It's my understanding you may not be
17 able to be present at the time of trial, so you
18 understand that this testimony you give today is
19 being videotaped and may be played for a jury at
20 the time of trial if you are not available to be
21 there in person?

22 A. Yes.

23 Q. It's going to be very important for me
24 to make sure that you and I understand each other
25 today. If I ask you any questions that you don't

1 understand, I want you to please stop me, let me
2 know you don't understand it, and I'll do my best
3 to rephrase that question. Okay?

4 A. Okay.

5 Q. Similarly, it won't be my intention to
6 interrupt you before you finish an answer.
7 However, if I do so unintentionally, please let me
8 know you have not finished your answer. We'll
9 stop. We'll give you a chance to finish your
10 answer. Okay?

11 A. Okay.

12 Q. You're doing a great job of audiblizing
13 you answers. One thing I may ask you to do at
14 times is to give an audible answer because
15 sometimes in conversations, we just nod our heads
16 or say "uh-huh" or "huh-uhn," but I may need to
17 ask you to give me a "yes" or "no" answer at
18 times. Okay?

19 A. Okay.

20 Q. I don't intend to be rude to you if I do
21 that. It's just that we need to have a clear
22 record. Okay?

23 A. Okay.

24 Q. It's my understanding you at this time,
25 point in time, no longer work for the Giant Eagle

1 HBC system; is that correct?

2 A. Correct.

3 Q. However, you are here with counsel for
4 HBC; is that correct?

5 A. Correct.

6 Q. Now, I don't get to find out and I'm not
7 asking you what you have talked with counsel about
8 in preparation for this deposition, but I would
9 like to know or get a general understanding of
10 what you have reviewed irrespective of
11 correspondence from your counsel in preparation
12 for the deposition.

13 For instance, I'm wondering if you've looked
14 at prior emails from your time at the company or
15 any other documents.

16 A. I have.

17 Q. Let's kind of break it down. First of
18 all, you've had some time to prepare to give your
19 testimony today; correct?

20 A. Yes.

21 Q. And I'm assuming that in preparation for
22 your testimony, you did want to look at some
23 documents that went back to the timeframe in which
24 you were involved at HBC?

25 A. Yes.

1 Q. And you had a chance to do that?

2 A. Yes.

3 Q. I suspect that some of those documents
4 we will be talking about today. It won't be my
5 intention to put anything in front of you that's
6 not, to the best of my understanding, a genuine
7 document that was given to us by the company. But
8 if at any point in time you don't understand what
9 a document is or you need to take a few more
10 minutes to look at it, you let us and we'll give
11 you a chance to do that. Okay?

12 A. Okay.

13 Q. Can you give us an approximation as to
14 how much time in terms of hours you have spent
15 getting ready for this testimony today?

16 A. I would say roughly eight hours.

17 Q. I don't get to hear what you talked
18 about. But you obviously had a chance to talk to
19 your attorney and meet with your attorney?

20 A. Uh-huh.

21 Q. "Yes"?

22 A. Yes. I met with the attorneys.

23 Q. And have you also had the opportunity or
24 taken time to try to speak to anyone who is still
25 at Giant Eagle with respect to any questions or

1 thoughts you may have had as you got ready for the
2 deposition?

3 A. I've not spoken with anybody at Giant
4 Eagle about the deposition.

5 Q. And I know sometimes they're thought of
6 interchangeably, but the same question with
7 respect to anyone who worked at the HBC warehouse,
8 have you spoken to them in preparation for this
9 deposition?

10 A. Not in preparation for this deposition.

11 (HBC-Carlson Exhibit 1 was marked.)

12 BY MR. ROTTINGHAUS:

13 Q. Let's take a look for a minute at
14 Exhibit 1, which I have passed out to your counsel
15 as well. I will represent to you that this was
16 not given to me by the company, but I actually
17 went to LinkedIn, a source that a lot of us use
18 these days; right?

19 A. Correct.

20 Q. And I typed in your name, and Exhibit 1
21 is a document that came up. The first thing I
22 would like to do is make sure that Exhibit 1 --
23 and, if we could, I might ask if we can split the
24 page so we can get the second page of Exhibit 1 on
25 the screen as well for you. It may be on the

1 screen right in front of you. You can look at the
2 hard copy or any screen you'd like to look at.
3 They should all be the same thing.

4 Take a minute, if you need to, to look at
5 this, but does Exhibit 1 appear to you to be a
6 document that indeed reflects you, Greg Carlson,
7 personally and some of the background you have had
8 in various capacities in your career?

9 A. Yes.

10 Q. Is Exhibit 1, to the best of your
11 knowledge, a document you prepared and then in
12 some way uploaded or submitted to LinkedIn?

13 A. Yes.

14 Q. Tell us a little bit about what LinkedIn
15 is.

16 A. LinkedIn, I guess it would be considered
17 a social media site but more geared towards
18 business, businesspeople and ways to connect with
19 them, find other people at other companies. I
20 just kind of look at it more as a social media
21 source.

22 Q. Some of us probably still refer to
23 documents with our background as r sum s. And in
24 some ways, does the LinkedIn social media site
25 allow you to submit your r sum or your past work

1 experience?

2 A. Yes. Most people kind of lay their page
3 out as a r sum , which is kind of how mine is laid
4 out.

5 Q. Do you recall how long ago you prepared
6 Exhibit 1?

7 A. Laying it out -- I've been on LinkedIn
8 for, I would say, over five years, probably closer
9 to ten. I'm not sure exactly when. And I've made
10 edits along the way. The most recent formatting
11 was probably -- I added the UPMC position. So it
12 was probably right around that time when I made
13 the most recent adjustment.

14 Q. In looking at the first page of
15 Exhibit 1, under experience for UPMC, I believe it
16 says from March 2017 to the present, and then it
17 says one year, 11 months.

18 So it would appear to reflect at least from
19 the time you last put information in here up to
20 the present day; is that correct?

21 A. Correct.

22 Q. And is it correct that you still do hold
23 the title of director of pharmacy MTM services at
24 UPMC Health Plan?

25 A. Yes.

1 Q. Do you work in the Pittsburgh area?

2 A. Yes. I work in downtown Pittsburgh.

3 Q. If we could go to the second page of
4 this document, I'm going to start where it says
5 Director of Pharmacy Sourcing. Actually, forgive
6 me. I'm going to go kind of towards the bottom.

7 First of all, the education section, it
8 appears that you obtained your Pharm.D. degree in
9 1998?

10 A. Yes.

11 Q. And then from 1998 until 2007, tell us
12 what you did.

13 A. So in 1998 -- actually, in '97 I
14 received my bachelor's degree in pharmacy. So I
15 was a pharmacist, went on for another year. So
16 from '97 I worked as a pharmacist for Osco Drug in
17 Chicago, part of the Jewel-Osco chain, as a staff
18 pharmacist.

19 And in 1999 I moved to Pittsburgh. I think
20 the end of March of 1999 moved to Pittsburgh and
21 started working with Giant Eagle at that point in
22 time as a pharmacist in the stores, in a role that
23 they called floater pharmacist where you would
24 work at any store that needed help covering
25 vacation times, maternity leaves, anything like

1 that. So I kind of worked all through the south
2 region of Pittsburgh as a pharmacist.

3 Q. To make sure I understand, that would be
4 in the retail Giant Eagle stores if someone came
5 to the pharmacy with a prescription or needed one
6 filled, you would be the person we usually refer
7 to as the pharmacist in the store?

8 A. Correct. And in 2000 I started a role
9 as pharmaceutical care coordinator -- it's more of
10 a clinical role -- out of the stores, office
11 based, corporate office based, and would go out
12 and visit with patients at their store that they
13 shopped at to review their medications.

14 So it was more of a sit-down typically in the
15 cafeteria area of the store, and we would review
16 their medications, looking for any kind of drug
17 interactions, drugs they don't need, making
18 recommendations to the physician based on their
19 profile and educate them on their disease states.

20 So I did that for roughly about a year or so.
21 At that point, there was a position open for
22 manager of pharmacy services, and that role -- I
23 applied for that role, and I got it. It was a
24 promotion. And that role consisted of
25 manufacturer relations, vendor relations,

1 wholesaler relationship, and also dealt with
2 marketing and other just tasks at corporate level.

3 Q. Do you recall what year you took that
4 position?

5 A. 2001. At some point in 2001 is when I
6 started that role and was in that role until the
7 one that is listed on LinkedIn as district leader,
8 pharmacy district leader. At the time I was in
9 that role, it was called pharmacy specialist.
10 It's the same thing as the pharmacy district
11 leader today.

12 Q. When you had the position as pharmacy
13 specialist, which is now known as pharmacy
14 district leader, did you work in the corporate
15 office?

16 A. It was more on the road based. So I
17 covered a region. So I was responsible for
18 anywhere from 25 to 35 stores at any given time.
19 So I was assigned a region and was responsible for
20 all the operations of the pharmacies for those
21 stores.

22 Q. Did you at any point in time have a
23 region of Ohio as part of your region?

24 A. No. I never covered any Ohio stores.

25 Q. And from 2001 to 2007, you held that

1 title?

2 A. 2005 to 2007 I was the pharmacy district
3 leader. So I was the manager of pharmacy services
4 from 2001 to 2005.

5 Q. And then on Exhibit 1, where pharmacy
6 district leader is listed from September 2005 to
7 March 2007, there appear to be about five bullet
8 point summaries of what your position entailed.

9 A. Yes.

10 Q. Is that correct? You don't have to go
11 through this in any particular order, but, again,
12 I'm particularly interested in what you were doing
13 in terms of monitoring pharmacy practices at that
14 point in time.

15 A. Well, we would do inspections of the
16 pharmacies on a regular basis. We'd come in and
17 we had a checklist, and we would go through that
18 to make sure that the pharmacies were following
19 proper procedure, all their paperwork was in line,
20 the record keeping was in line.

21 We would monitor the stores' sales, their
22 labor spend and look at all of that, and we'd
23 review that with the pharmacy leader at that
24 store.

25 Q. You mentioned that you would use a

1 checklist. Is that something you prepared or was
2 that something that was prepared at corporate?

3 A. There was a corporate checklist that you
4 would follow.

5 Q. This may sound like a silly question,
6 but why does it make sense to have a checklist
7 when you're going to various stores and going
8 through --

9 A. It just gave you something to, you
10 know -- it created a routine for you to do.

11 Q. Created a routine for you as the PDL or
12 the pharmacy rep at that time?

13 A. Yeah, yes.

14 Q. And also for the pharmacies to
15 understand what the expectations were for them as
16 well?

17 A. Yes.

18 Q. And that's typical in most businesses;
19 is that correct?

20 A. Yes.

21 Q. And then you, I think, mentioned that
22 you wanted to make sure they were up to date and
23 correctly doing their record keeping.

24 A. Yes.

25 Q. In a pharmacy it's important to keep

1 accurate records?

2 A. Yes.

3 Q. Why is that?

4 A. Well, certain requirements are in place
5 for state and federal laws. So I was just
6 checking in on that.

7 Q. And then you mentioned, I think, that
8 along the checklist, you wanted to check and make
9 sure they were following proper procedures.

10 A. Yes. We would look at things like their
11 workflow, how they were set up, were they
12 following what we recommended for the workflow of
13 the store. We would monitor the lines, how long
14 were the lines. It could indicate whether or not
15 they were following proper workflow procedures.
16 It was a multitude of things.

17 Q. Again, we don't need to get into the
18 details of them. But these workflow procedures
19 you're talking about, I assume those were
20 procedures that were somewhere written in writing
21 to give guidance to your pharmacists?

22 A. I'm not certain. I can't remember as
23 far as what was in writing or not back in the 2005
24 timeframe. I can't really answer that one.

25 Q. Was it -- and if you can't tell us,

1 that's fine. Was it your experience that when you
2 worked with Giant Eagle, there were indeed some
3 policies that the company expected their
4 pharmacists to follow?

5 A. Yes.

6 Q. And some of those policies were actually
7 written in writing to give guidance to the
8 pharmacists?

9 A. Yes.

10 Q. And not only for the pharmacists, but
11 it's your understanding and memory at the time
12 that there were also policies or procedures, if
13 that's what you would prefer to call them, that
14 were in writing that dealt not only with pharmacy
15 services, but other aspects of the company as
16 well?

17 A. Yes. There were many policies in place
18 across the whole organization.

19 Q. That's been consistent with your entire
20 career. You've seen companies that have policies
21 in place; correct?

22 A. Yes.

23 Q. And policies help provide guidance to
24 employees of the company?

25 A. Generally, yes. There's policies. We

1 have procedures. We have guidelines. So there's
2 different classifications of what I would kind of
3 consider a policy versus a guideline.

4 Q. Sure. How do you differentiate between
5 a policy and a guideline?

6 A. Policies tend to be more HR driven. You
7 know, they're meant from an HR perspective to be
8 utilized versus guidelines. Within the profession
9 of pharmacy, you provide guidelines to the
10 pharmacists on how we would like them to operate.
11 But there are, you know, professional judgment
12 that will kind of supersede some of that.

13 Q. Because any pharmacist who practices may
14 have gone to school for a long time and learned a
15 lot of information to help them develop expertise
16 as a pharmacist?

17 A. Yes.

18 MR. BARNES: Object to the form to the
19 extent you're asking him to speculate as to any
20 pharmacist.

21 BY MR. ROTTINGHAUS:

22 Q. I don't want you to speculate. We'll
23 focus on what you know. It's your understanding
24 you personally went to school for a long time to
25 earn the degree that you have in pharmacy;

1 correct?

2 A. Yes.

3 Q. And it's hard work?

4 A. It wasn't easy.

5 Q. Any pharmacist, as you said I think, is
6 expected to use clinical judgment at times when
7 they practices as a pharmacist.

8 A. Yes.

9 Q. However, I think you also said that
10 there are times where guidelines might be written.
11 They could be procedures. And you correct me if
12 I'm wrong, but guidelines might be written to
13 allow a pharmacist who is using his or her
14 professional judgment to also understand what some
15 basic expectations are for any particular
16 scenario?

17 MR. BARNES: Object to form.

18 THE WITNESS: I would just need more
19 specific on the question.

20 BY MR. ROTTINGHAUS:

21 Q. Well, you tell me what type of
22 guidelines you remember being in place for
23 pharmacists between 2005 and 2007.

24 MR. BARNES: Tom, I'd just remind you
25 that HBC didn't distribute any controlled

1 substance before November 2009.

2 MR. ROTTINGHAUS: I'm just trying to
3 build a little foundation. I understand the
4 objection.

5 THE WITNESS: I can't recall. I mean,
6 over the years I was with Giant Eagle, I know we
7 had different procedures in place. This year
8 particular, I couldn't tell you what exactly was
9 in place. It's a very difficult question to
10 answer looking back that far.

11 BY MR. ROTTINGHAUS:

12 Q. Now, you just used the term procedures,
13 and I really want to just make sure we're on the
14 same page with what we're talking about.

15 I think you mentioned that you consider
16 policies to typically be HR, which I assume you
17 mean human resources, driven.

18 A. Yes.

19 Q. Then you mentioned procedures and
20 guidelines. Do you differentiate between
21 procedures and guidelines?

22 A. I mean, they're similar. I mean, some
23 documents may call it one thing, one may call it
24 another.

25 Q. In your role as pharmacy district leader

1 up through March of 2007, and, again, when we talk
2 about part of your role being monitor of pharmacy
3 practices, in any way did you have responsibility
4 to review any written practices, whether they be
5 called policies, procedures or guidelines, that
6 were in writing for the pharmacists at that point
7 in time?

8 MR. BARNES: Object to the form. Lack
9 of relevance.

10 THE WITNESS: Can you ask the question
11 again?

12 BY MR. ROTTINGHAUS:

13 Q. Sure. It may help if I just make sure
14 we know where we're looking. I'm still looking on
15 Exhibit 1 in your role as pharmacy district leader
16 from September 2005 to March of 2007.

17 A. Yes.

18 Q. And I'm looking at the last I'll call it
19 bullet point where it says, "Visit pharmacies
20 within region regularly to monitor pharmacy
21 practices." I just want to make sure I completely
22 understand.

23 When you talk about monitoring the pharmacy
24 practices, I think you mentioned that you would go
25 over record keeping, that you would have a

1 checklist or go through checklists with the
2 pharmacy teams; is that correct?

3 A. Yeah. That's a very generic term. It
4 was just in there basically to say I would
5 oversee -- make sure they're following the process
6 that we want them to, their customer service is up
7 to par, their quality is up to par. So that
8 encompasses really everything under pharmacy
9 practices.

10 Q. And during that timeframe, were you also
11 in any way responsible for reviewing written
12 policies, procedures or guidelines that existed
13 for the pharmacies?

14 MR. BARNES: Same objection.

15 THE WITNESS: When you say review, do
16 you mean read? Because, I mean, reading, yes.
17 Formulating at this time, no.

18 BY MR. ROTTINGHAUS:

19 Q. That's a good point. It's my
20 understanding you were not responsible all the way
21 up to 2007 for formulating any policies,
22 procedures or guidelines.

23 A. Correct, in that position.

24 Q. However, I think what you're saying is
25 you may have at times reviewed certain written

1 policies, procedures or guidelines, but sitting
2 here today, you couldn't tell us exactly what you
3 did?

4 A. No.

5 Q. And sitting here today, is it fair to
6 say that you can't really even recall what
7 specific policies, procedures or guidelines were
8 in writing up through March of 2007 for Giant
9 Eagle?

10 MR. BARNES: Same objection.

11 THE WITNESS: Yeah. I couldn't tell you
12 specific policies from 2005 or through 2007.

13 BY MR. ROTTINGHAUS:

14 Q. We're going to jump forward here in just
15 a second to your new position you took in April of
16 2007.

17 Do you feel like we have covered all of the
18 responsibilities and duties you fulfilled for
19 Giant Eagle as a pharmacy district leader from
20 September 2005 through March 2007 just generally?

21 MR. BARNES: Are you saying in addition
22 to what's written on his LinkedIn profile?

23 MR. ROTTINGHAUS: Yeah.

24 BY MR. ROTTINGHAUS:

25 Q. I mean, obviously, we're looking at your

1 LinkedIn profile. I'm not asking for details. I
2 understand it was several years ago and you
3 probably don't remember every detail of every day,
4 and I certainly don't expect that.

5 A. Yeah. I mean, generally speaking, yes,
6 there were other things that would pop up day to
7 day. If anything happened at the store, it was
8 something I had to deal with.

9 Q. And correct me if I'm wrong. I think
10 you said there were maybe, give or take, but
11 around 25 to 35 stores you were responsible for
12 during that timeframe?

13 A. Yes.

14 Q. Were they in the greater Pittsburgh
15 area?

16 A. Most of them were in the southern region
17 of Pittsburgh, and that actually extended down to
18 Morgantown, West Virginia. But then there were
19 times where I would cover other regions if there
20 was a leave of absence. I do recall one time I
21 had the Beaver Valley area. But it was generally
22 around the Pittsburgh market.

23 Q. It's my understanding that Giant Eagle
24 during the timeframe when you worked there had
25 pharmacies in five different states.

1 A. Yeah, up to five at the time I worked
2 there.

3 Q. Pennsylvania?

4 A. Ohio, West Virginia, Maryland and
5 Indiana.

6 Q. During this timeframe we've been talking
7 about, 2005 to 2007, you were primarily covering
8 stores in Pennsylvania but maybe some stores in
9 West Virginia?

10 A. Yeah, West Virginia as well.

11 Q. Any other states?

12 A. No.

13 Q. Let's move right above this area to your
14 title of director of pharmacy sourcing from
15 April 2007 to April 2012. If it's hard to read on
16 that hard copy, again, it's on the screen if
17 that's helpful to you.

18 I see that you have also kind of listed some
19 bullet points that give a general summary for what
20 you did during that timeframe.

21 A. Yes.

22 Q. If you can just in your own words
23 describe for us what your position entailed as
24 director of pharmacy sourcing from April of 2007
25 to April of 2012.

1 A. In that role, the primary role was to
2 find cost savings through sourcing. So it was
3 including anything that the pharmacy would
4 purchase. It could include supplies such as bags,
5 vials, anything like that, or medications. So it
6 could be through our wholesaler contract. There
7 was pricing established within each contract. So
8 I was involved in those negotiations as well as
9 finding any other ways to save money on any
10 product.

11 Q. I see that -- first of all, the point
12 you mentioned that you negotiated the wholesaler
13 contract to save \$16 million annually, was that as
14 part of a team, or was that just you individually
15 who was involved in that negotiation?

16 A. There were people involved other than
17 myself. I was kind of like the point person, but
18 we did have a team working on that.

19 Q. Do you recall whether that contract
20 entailed, among other things, controlled
21 substances?

22 A. With the wholesaler we were purchasing
23 controlled substances. So it would entail that,
24 nothing broken out specifically for that.

25 Q. We're going to be talking about

1 controlled substances at various times obviously
2 today. Specifically, I'm going to be talking
3 about hydrocodone combination products. Is that a
4 term that's familiar with you?

5 A. Yes.

6 Q. Sometimes they're referred to, I think,
7 as HCPs for short; is that correct?

8 A. Yeah. I mean, I never referred to it
9 that way, but I guess you could go there.

10 Q. I'll try not to use that term. If I do,
11 feel free to remind me you don't know what I'm
12 talking about. But I'm probably going to be --

13 A. HCP meaning hydrocodone combination
14 products?

15 Q. Yes, or combination products.

16 A. Combination products. Okay.

17 Q. I think it's probably the same thing
18 we're talking about.

19 In April 2007 when you negotiated this
20 wholesaler contract, do you know whether that also
21 entailed hydrocodone combination products?

22 A. It would have been included in the
23 general pricing structure.

24 Q. I should have told you. You probably
25 know this. At times people may have a concern

1 about a question I ask, and it may be well
2 founded, but nobody is trying to interrupt us, but
3 I'll try to let them finish their objection. If
4 you can, let them try to get their objection in as
5 well.

6 A. Okay.

7 Q. I see in the second bullet you state
8 that you at that time at least, it says, opened
9 generic prescription drug warehouse for pharmacy
10 with estimated annual savings of over \$20 million
11 by purchasing direct from the manufacturer.

12 I'm assuming, and I could be incorrect, but
13 I'm assuming this is the HBC warehouse.

14 A. Yes. That would be the HBC warehouse.

15 Q. Were you involved in starting that
16 warehouse from the ground up?

17 A. Yes.

18 Q. Who else at the company was involved?

19 A. Well, there were several people
20 involved. It was kind of a team project to get it
21 up and running.

22 MR. BARNES: Excuse me. Tom, for
23 clarification, you mean as a brand new warehouse
24 opening for the first time and doing any business
25 whatsoever or just with respect to

1 pharmaceuticals?

2 MR. ROTTINGHAUS: That's a good
3 question. Let's clarify.

4 BY MR. ROTTINGHAUS:

5 Q. When did HBC warehouse open, not just
6 with respect to controlled substances or
7 pharmaceuticals, but when did that warehouse open
8 up?

9 A. I don't know the specific dates. It
10 goes back. It predates me. We purchased actually
11 FoxMeyer. My understanding, it was a FoxMeyer
12 warehouse that McKesson acquired. And we ran it
13 from there as HBC at that point. I think that was
14 pre-2000. I don't have specific dates.

15 So I know HBC had been operating for a while
16 before. All we did -- when I say open generic
17 warehouses, we isolated a spot within the
18 warehouse, secured it and utilized that. It was
19 just an add-on to the warehouse.

20 Q. And when you say secured it, you're
21 talking about putting security controls in place
22 because, among other things, some of the
23 medications that were going to be coming into and
24 out of that warehouse were controlled substances?

25 A. Not at this time. When we opened it, it

1 was really finding a location that was isolated
2 because even prescription drugs need to be
3 isolated securely, whether it's Amoxicillin or
4 Simvastatin, cholesterol medications. So it was
5 really just finding a location that had secure
6 walls, doors, that we could have security access
7 to so we knew who was going to go in that specific
8 room. At the time we opened, that was our
9 thought.

10 Q. Do you recall when HBC first started
11 distributing hydrocodone combination products?

12 A. I believe, from recollection, it was
13 2009. It was towards the end of 2009. So it was
14 either the end of 2009 or early 2010 after we
15 received our DEA license.

16 Q. And then it continued to do so until
17 2014 as I understand it.

18 A. Correct.

19 Q. So when you were first involved in
20 starting the HBC warehouse, it predated the DEA
21 license to distribute hydrocodone combination
22 products, among other things?

23 A. Yes.

24 Q. Let's go to that last bullet under your
25 title of director of pharmacy sourcing from 2007

1 to 2012. It states that you negotiated with brand
2 drug manufacturers to secure funding for
3 pharmacist education, in-store promotions and
4 patient compliance programs.

5 Do you remember what patient compliance
6 programs you were involved in?

7 A. I'm trying to remember. It probably
8 didn't happen that much in that timeframe. That
9 was more we would do medication adherence letters.
10 We call them refill reminder letters. That was
11 probably more towards the manager pharmacy
12 services role. That bullet may be a little bit
13 misplaced there as far as that goes.

14 The only compliance programs were we would
15 send letters on behalf of -- the manufacturers
16 would help, you know, fund the cost of the letter
17 going out, but it was really for the patients'
18 behalf. It was typically like maintenance
19 medications, like a cholesterol medication,
20 something like that.

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20 Q. Did you personally go into the HBC
21 warehouse physically on a regular basis between
22 2007 and 2012?

23 A. I visited I couldn't say regularly. I
24 couldn't answer specifically, but I definitely
25 would visit from time to time.

1 Q. When you went to work each day, you
2 weren't going into that warehouse every day?

3 A. No.

4 Q. Are you able to tell us approximately
5 how many times you visited the HBC warehouse
6 during your entire tenure with the Giant Eagle
7 company?

8 MR. BARNES: Object to form to the
9 extent it asks for anything prior to 2009.

10 THE WITNESS: I can't give you a number,
11 an accurate number. I probably couldn't even
12 estimate it at this point.

13 BY MR. ROTTINGHAUS:

14 Q. Let's focus between 2009 and 2014. Do
15 you think you visited the HBC warehouse on at
16 least a yearly basis one time a year?

17 A. I would say a yearly basis, yes.

18 Q. What would be the purpose for going
19 physically to the warehouse?

20 A. Sometimes it was just to meet with the
21 team there to see how things were going, to see if
22 anything needed to be changed. Anything could
23 have come up as far as do we need additional
24 shelving, do we need new shelving, are we going to
25 try new processes at the warehouse and they wanted

1 to either show us or talk to us about it.

2 So it could have been any kind of meeting
3 such as that.

4 Q. Do you remember any particular
5 individuals who you considered to be a part of the
6 team at HBC warehouse?

7 A. Yes. I do recall some folks there that
8 were -- that I would just talk to on a regular
9 basis. Andy Zalewski was early on one of the team
10 members I would talk to. I don't remember when he
11 left. Christy Hart was one of the main people
12 there, too, that I would talk to. And then Walt
13 Durr and Matt Rogos. At another point in time,
14 Matt Rogos was another individual.

15 Q. Do you remember between 2009 and 2014
16 what Walter Durr's title was for HBC?

17 A. I don't know specifically during that
18 time because I know Walt had moved. There were
19 some changes in the wholesale or the warehouse
20 level team members where they -- I know Walt got
21 additional responsibilities at one point in time.
22 So I don't remember at that time what Walt's
23 position was. I'm assuming he was in charge of
24 HBC, but I can't answer that accurately.

25 Q. What about Mr. Rogos, do you remember

1 what he did at HBC?

2 A. There was a point in time where he came
3 in after Andy left. Again, timeline-wise, I'm a
4 little fuzzy on when Matt was there. So he was in
5 charge of the facility at one point in time, the
6 HBC facility. And then, you know, Christy kind of
7 reported to him.

8 Q. I understand Giant Eagle was a big
9 company, and it looks like you wore different hats
10 for the company, for lack of a better term, at
11 different points in time.

12 I'm not trying to make you an expert in
13 something you don't feel like you have the
14 expertise to tell us about. So if I ask you
15 questions about HBC or some aspect of HBC that you
16 don't feel like you're the right person to answer
17 it, I respect that. Just let us know.

18 A. Okay.

19 Q. Having said that, I'm going to ask you
20 some questions to see if you do know.

21 Between 2009 and 2014, do you believe you
22 were the person who overall oversaw operations at
23 HBC?

24 A. I did not oversee operations at HBC.

25 Q. At any point in time all the way up to

1 2016, do you believe you were the person who
2 oversaw operations at HBC?

3 A. Not at an operations level, no.

4 Q. At any level?

5 A. I was involved with decision making
6 regarding HBC but not from an operational
7 standpoint.

8 Q. Correct me if I'm wrong, but as I
9 understand it, because you were involved in
10 contracts that were being executed with various
11 vendors or manufacturers, you would have been
12 involved at least indirectly with what HBC had
13 coming into its warehouse and going out of its
14 warehouse?

15 A. Yes. As far as product choice, yeah, it
16 would come from me or my team as far as that goes.

17 Q. But in terms of day-to-day operations,
18 were you the person who someone at HBC would call
19 if they needed supervisory authority to do
20 something?

21 A. If there was a question regarding
22 something related to the store level, then it
23 could come up through me.

24 Q. What if it related to HBC as the
25 distributor at that level, were you the person

1 someone would contact with a question about, hey,
2 can we distribute this medication to store number
3 whatsoever?

4 A. There were times where questions would
5 come up about a specific order and it was asked.
6 So they could ask me that question.

7 Q. I'm trying in my mind to get a better
8 understanding of, for lack of a better term, a
9 chain of command if there was one. Let me ask you
10 this. If you can tell me, great. If you can't,
11 just let me know.

12 Between 2009 and 2012, do you believe there
13 was an individual at Giant Eagle who was in charge
14 and had the ultimate supervisory authority at HBC?

15 A. Yes. There was somebody in charge at
16 HBC.

17 Q. Was it you?

18 A. From a supervisory perspective?

19 Q. Yes.

20 A. No. I did not do any team member
21 reviews for anybody at HBC. I wouldn't be
22 involved in disciplining anybody at HBC. Nobody
23 reported to me from an organizational structure.

24 Q. You said it better than I asked it. I
25 appreciate that.

1 Who was the individual who would review
2 performance of individuals at HBC?

3 A. I can't answer that question. I'm not
4 certain.

5 Q. With respect to if there was a need to
6 discipline someone at HBC warehouse for any
7 particular reason, do you know who that person
8 would be?

9 A. It would have gone up through their
10 chain of command at HBC, the org chart at any date
11 in time. So it would depend on who was in charge
12 of the facility. Like I said, who was in charge
13 did change a couple times through the years, but I
14 couldn't tell you when or who exactly. So I think
15 it would have to be -- I don't think I can answer
16 that one for you accurately.

17 Q. That's fine. I have to confess to you I
18 don't have an org chart for HBC. I do have one, I
19 think, for at least as of 2014 for Giant Eagle.
20 And maybe that's the same.

21 (HBC-Carlson Exhibit 2 was marked.)

22 BY MR. ROTTINGHAUS:

23 Q. That's Exhibit 2, and we'll look at that
24 in a minute, but if you want to look at that to
25 answer any of these questions, you can feel free

1 to do so. We'll come back to it though.

2 Were you the individual who oversaw HBC's
3 compliance as a distributor of controlled
4 substances between 2009 and 2014?

5 A. Well, the compliance did fall under me
6 as far as we did have a team looking at compliance
7 also, but, I mean, ultimately, as far as the -- if
8 you want to refer to an exhibit at all. But at
9 this point in time, compliance would have fallen
10 under me.

11 Q. Between 2009 and 2014?

12 A. This is '14, but yes.

13 Q. And you can feel free to look at an
14 organizational chart if you need to, but I'm not
15 asking you to go off that. I'm really wanting to
16 know what Mr. Carlson remembers. If you need to
17 look at that again, that's fine.

18 So let me make sure I understand because
19 compliance is kind of a general term, isn't it?

20 A. Right.

21 Q. What does compliance mean to you?

22 A. Well, following all the rules and
23 regulations put in place, whether it's federal
24 government laws or state laws.

25 Q. So as I understand it, whatever state a

1 warehouse that distributes medications is in, it
2 has to comply with that state's laws?

3 A. Correct.

4 Q. And then as you mentioned, there are
5 also often laws at a federal level or regulations
6 at a federal level that must be followed as well?

7 A. Yes.

8 Q. And you probably have some familiarity
9 with what's known as the Controlled Substances
10 Act?

11 A. Yes.

12 Q. And is it your understanding that the
13 Controlled Substances Act has some requirements
14 that distributors of controlled substances must
15 follow regardless of what state they're practicing
16 in?

17 A. Yes.

18 Q. You probably got some of the basic
19 background about the Controlled Substances Act in
20 pharmacy school.

21 A. Yes.

22 Q. And then you probably learned some of
23 that on the job as well?

24 A. Yes.

25 Q. Have you individually ever attended any

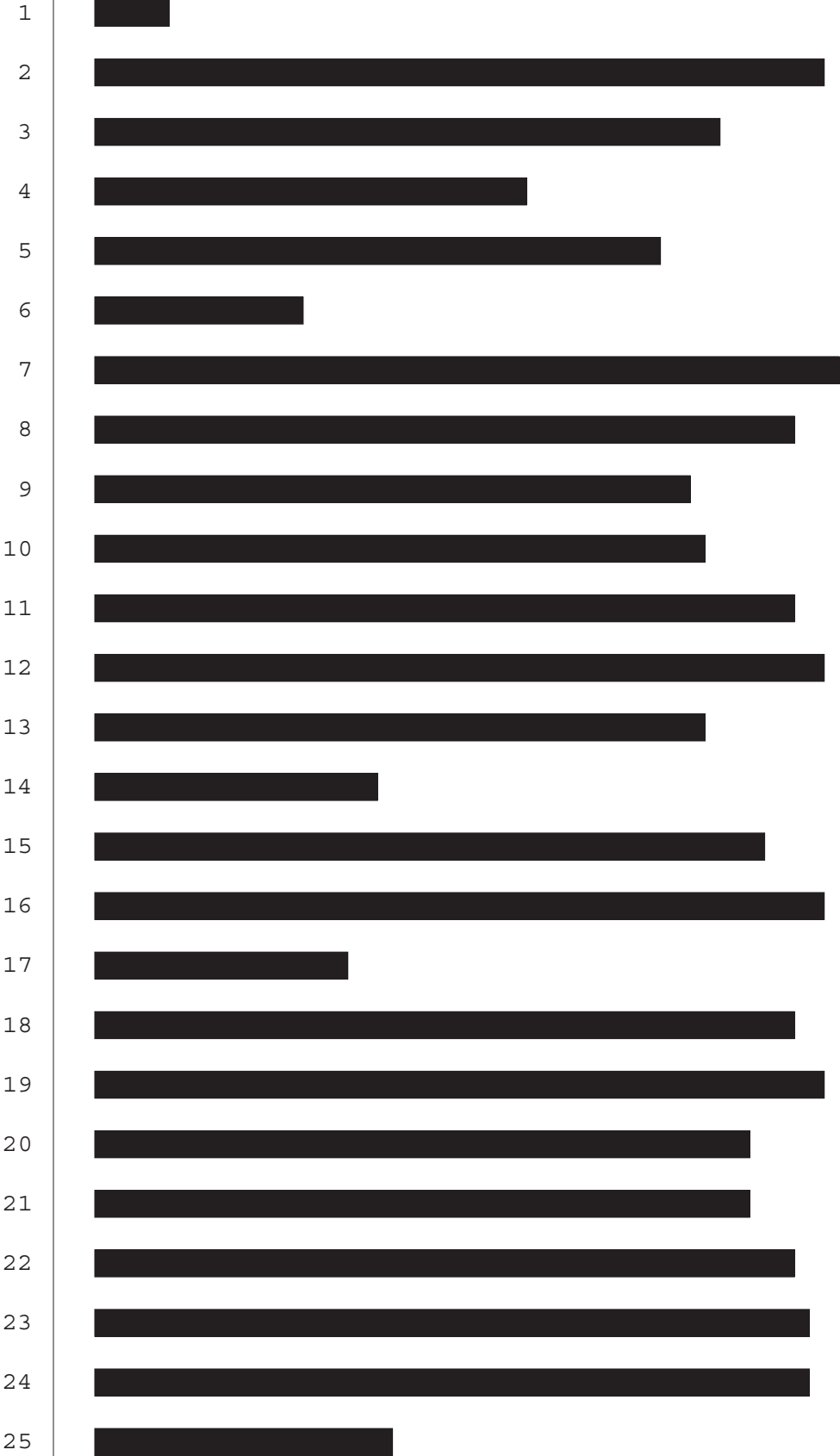
1 conferences that, to the best of your
2 understanding, focused primarily on the duties of
3 a distributor of controlled substances to comply
4 with the Controlled Substances Act?

5 A. I attended many conferences. I don't
6 recall a specific one regarding that topic.

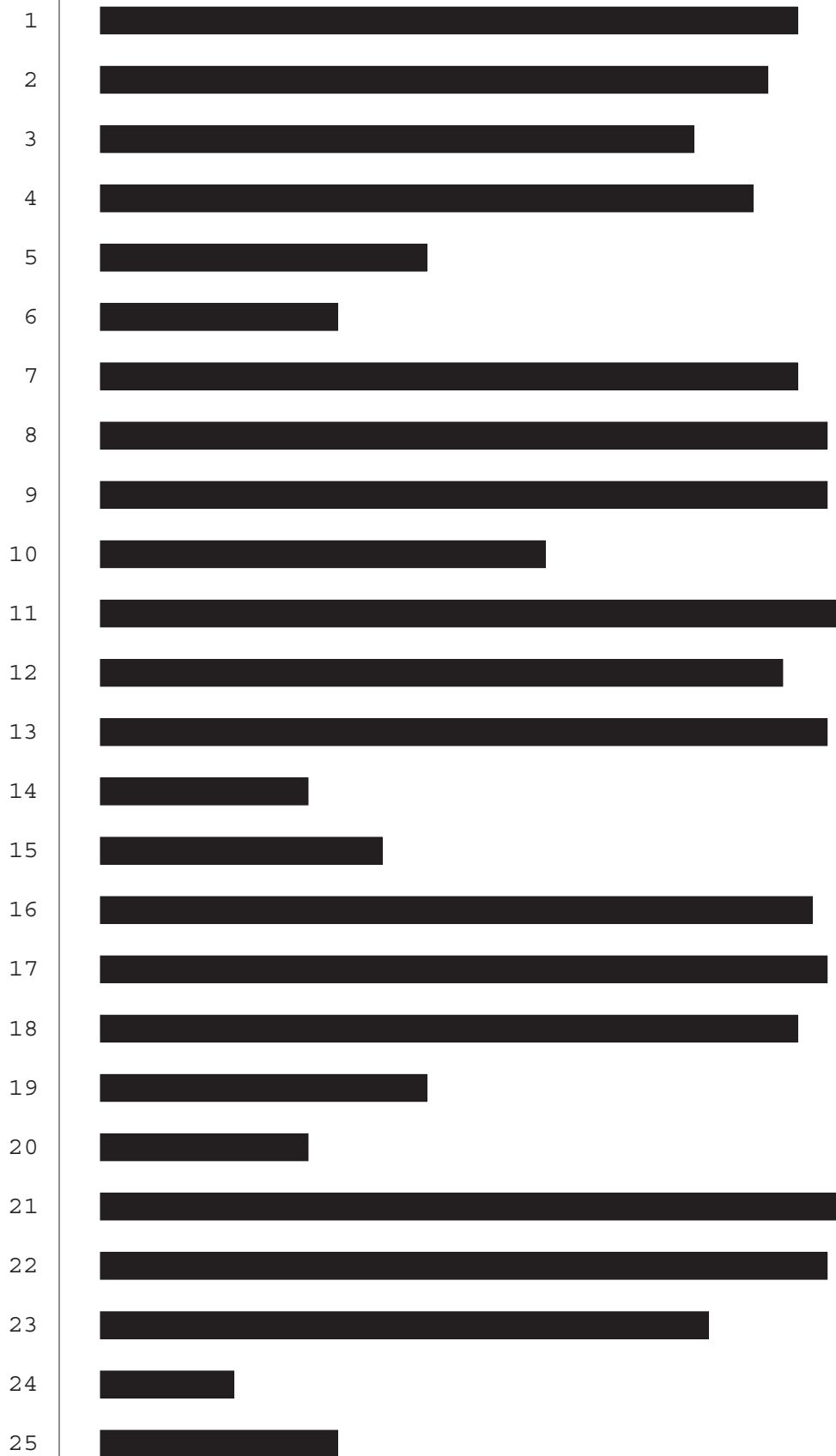
7 Q. When we talk about compliance, are you
8 in part referencing the duty of HBC warehouse to
9 comply with the Controlled Substances Act?

10 A. Yes.

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(HBC-Carlson Exhibit 3 was marked.)

BY MR. ROTTINGHAUS:

Q. I have a hard time with that word.
Let's refer for a minute to Exhibit 3, but we're
going to come back to Exhibit 1. Okay?

A. Okay.

Q. Let's look at Exhibit 3, which is
general number 010. So that you know,
Mr. Carlson, I'm going to reference sometimes
general numbers. It's really just for the person
who's putting all of these up on the screen for
us. Okay?

Do you have Exhibit 3 in front of you?

A. Yes.

Q. I think this is a portion, not the
entirety, of the Code of Federal Regulations
dealing with registration of manufacturers,
distributors and dispensers of controlled
substances, and the specific section that
Exhibit 3 references is a section you've probably
heard of or referred to before, Section 1301.74.

Are you familiar with this section?

1 A. I'm sure I've read it at some point in
2 time.

3 Q. Specifically I'd like to direct your
4 attention to subsection (b) of 1301.74.

5 MR. BARNES: Tom, for the record, I'm
6 going to object to this exhibit as being just one
7 subpart of the security requirement in the Code of
8 Federal Regulations. Not only have you just taken
9 one part. You haven't given him the 1301.71 and
10 the other regs of which this is a part of.

11 BY MR. ROTTINGHAUS:

12 Q. Are you with me?

13 A. Yes.

14 Q. I'm going to read subsection (b). You
15 tell me if I've read it incorrectly. "The
16 registrant shall design and operate a system to
17 disclose to the registrant suspicious orders of
18 controlled substances. The registrant shall
19 inform the field division office of the
20 Administration in his area of suspicious orders
21 when discovered by the registrant. Suspicious
22 orders include orders of unusual size, orders
23 deviating substantially from a normal pattern and
24 orders of unusual frequency."

25 Did I read that correctly?

1 A. Yes.

2 Q. And have you seen this provision or
3 requirement before?

4 A. Like I said, I've read this before in
5 the past. So, yes, I have seen it.

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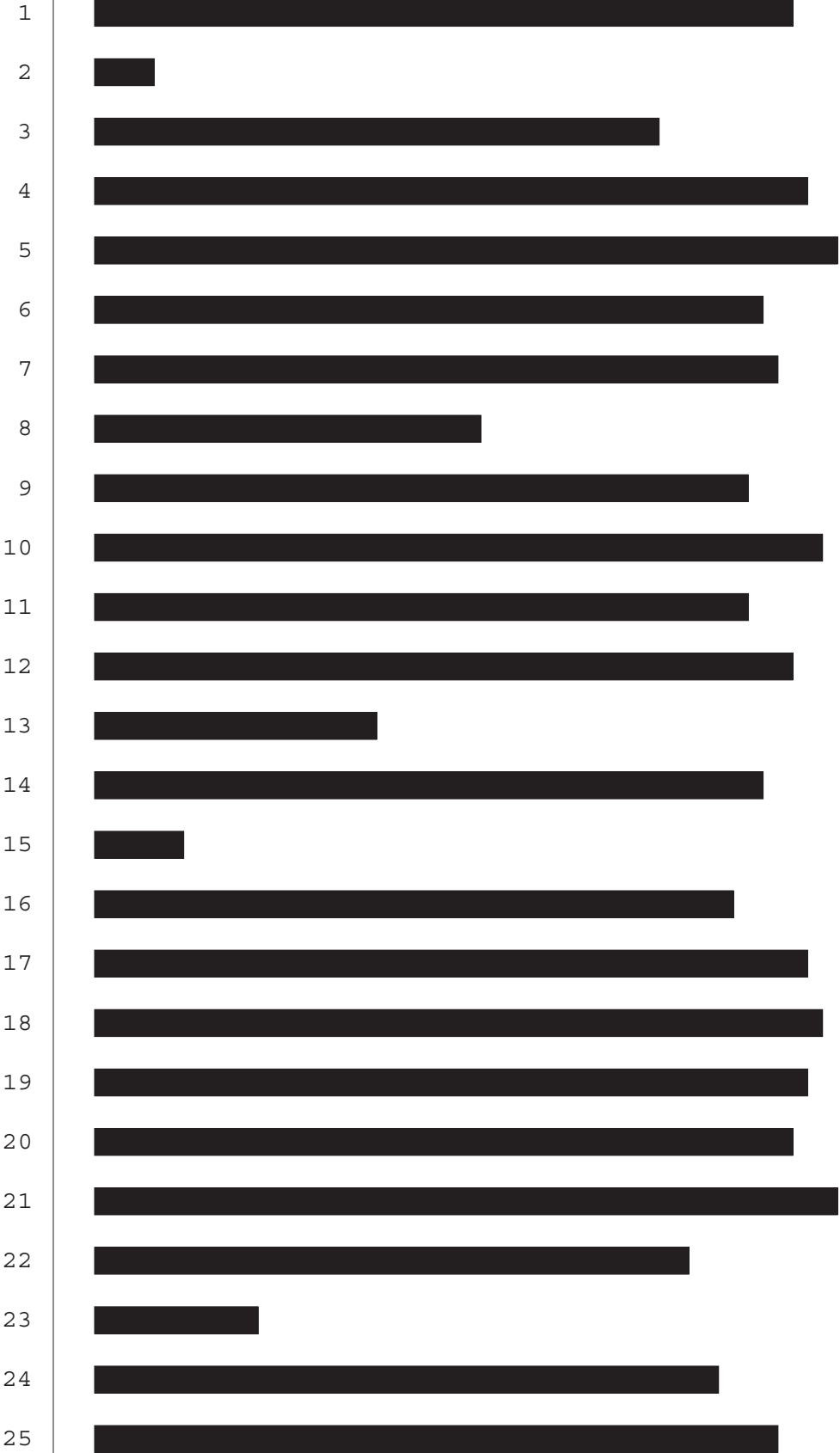
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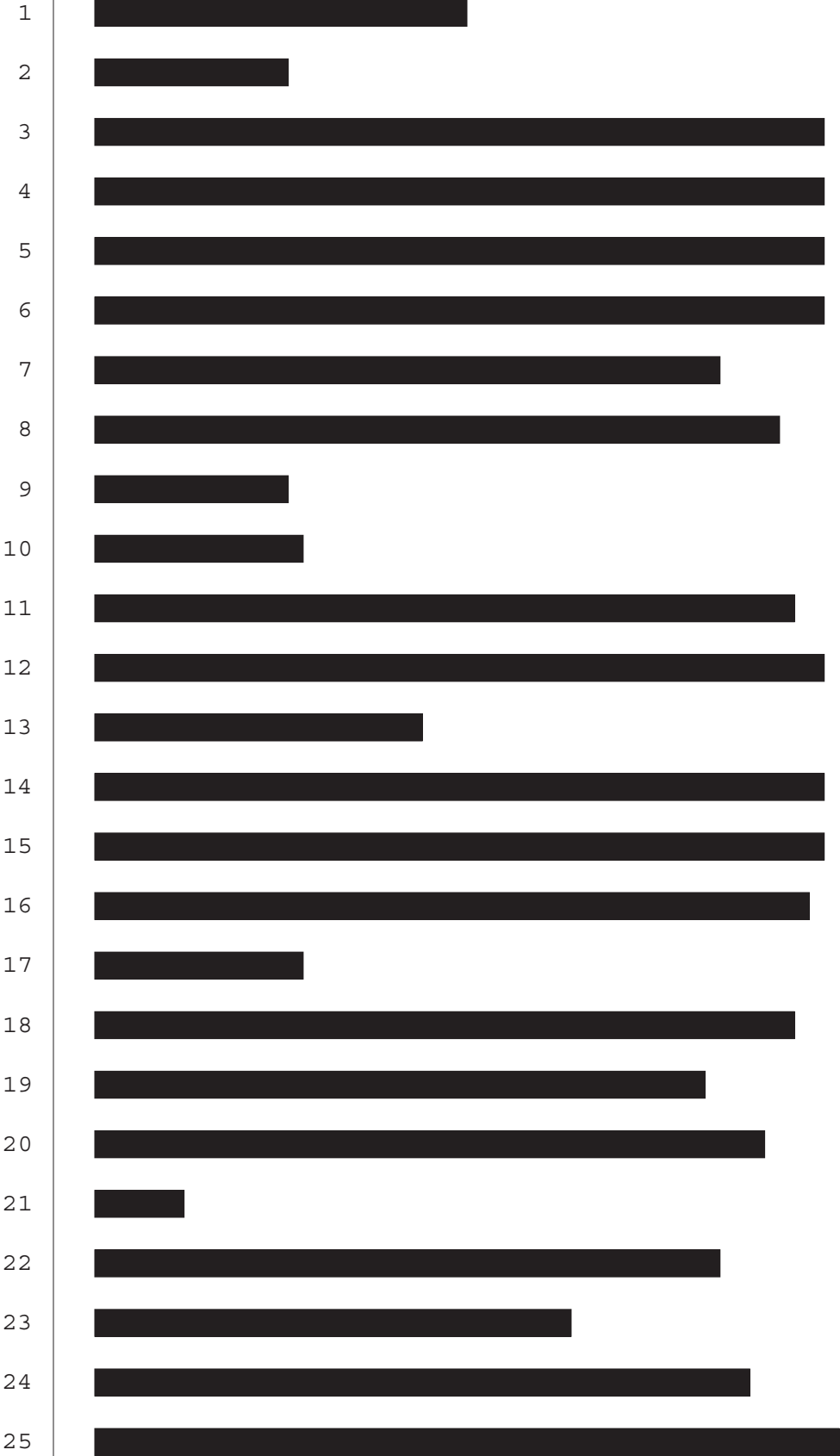






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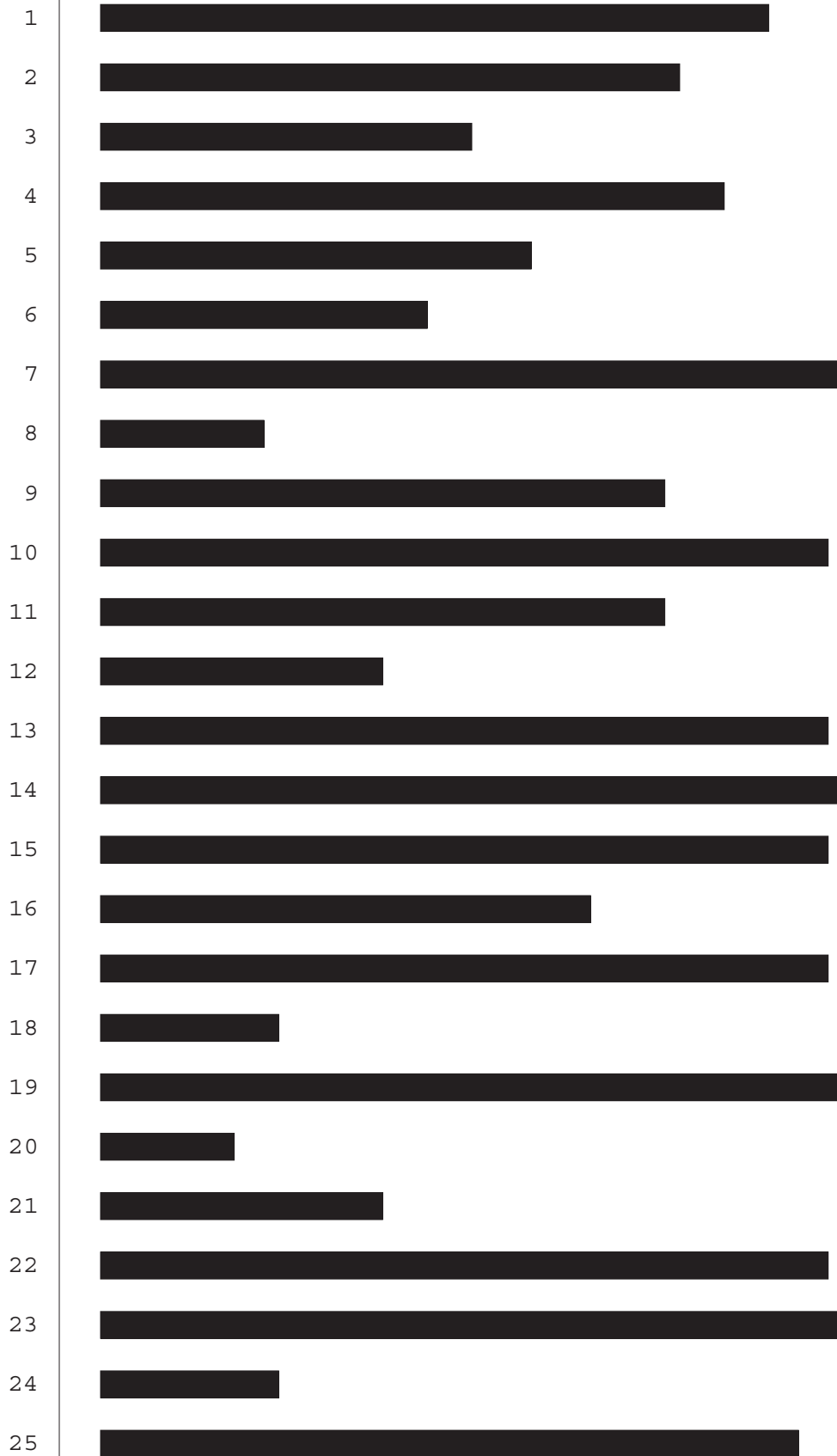




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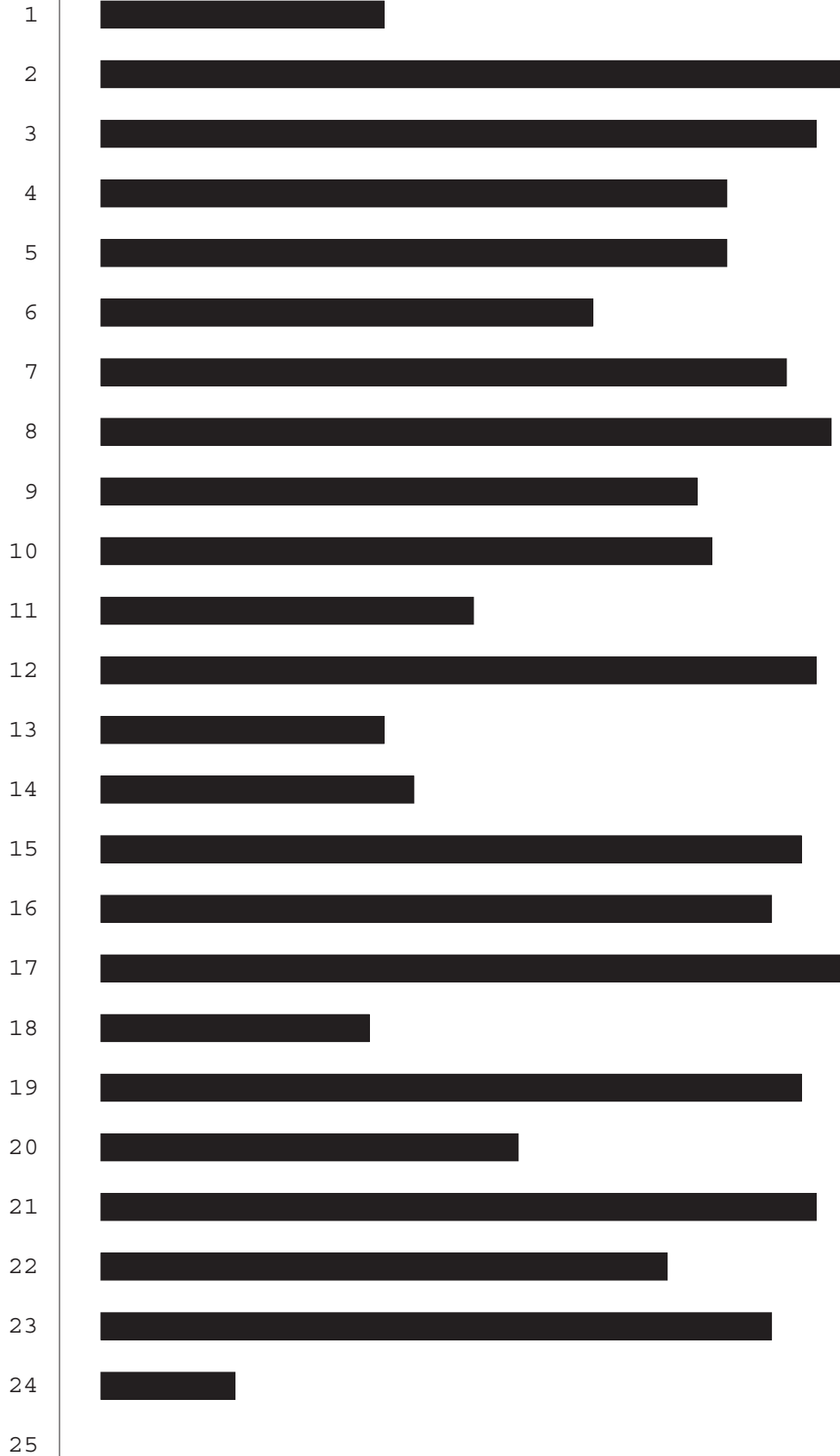
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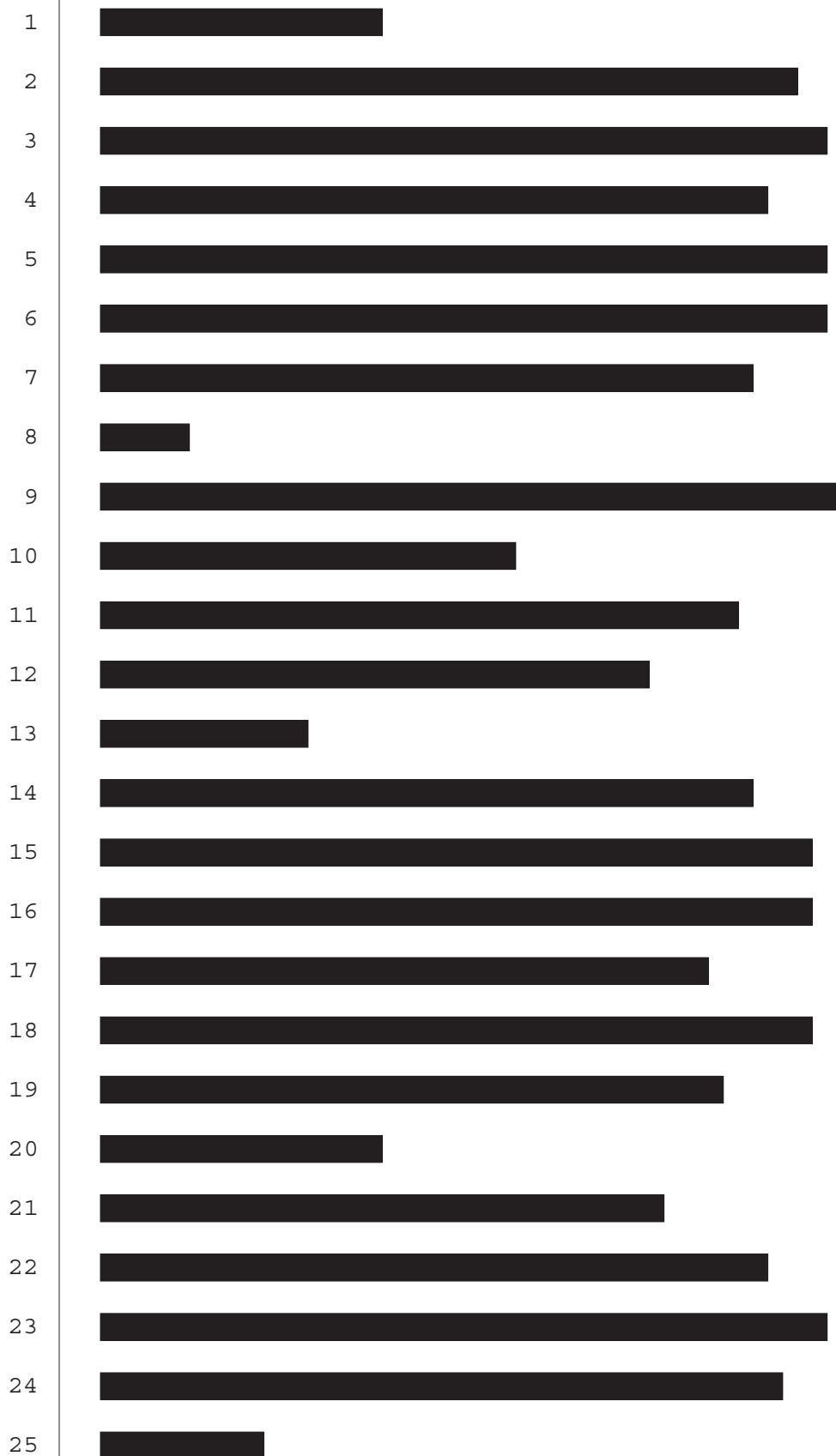
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1 BY MR. ROTTINGHAUS:

2 Q. Is it ever a good idea to put policies
3 in writing, in your opinion?

4 MR. BARNES: Same objection.

5 THE WITNESS: I don't think there's
6 anything wrong with putting a policy in place.

7 BY MR. ROTTINGHAUS:

8 Q. You think sometimes it's a good idea?

9 MR. BARNES: Object to form.

10 THE WITNESS: I think it depends on your
11 organization. If the organization runs off
12 policies, then that's what they would put
13 together.

14 BY MR. ROTTINGHAUS:

15 Q. Did HBC run off policies between 2009
16 and 2014?

17 A. We ran off of procedures.

18 Q. Some of those procedures were put in
19 writing in the form of a policy; correct?

20 A. If you could point to one, I can say yes
21 or no. I don't know.

22 Q. If you don't know, that's fine.

23 A. Yeah. I don't know.

24 Q. And you don't know sitting here today as
25 the person responsible for making sure the company

1 was complying with the Controlled Substances Act
2 between 2009 and 2014 whether HBC had any policies
3 in writing during that timeframe?

4 MR. BARNES: Object to form.

5 THE WITNESS: They had procedures in
6 writing.

7 BY MR. ROTTINGHAUS:

8 Q. Now you're using procedures, not
9 policies. So I want to make sure I'm not getting
10 confused.

11 A. It's a definition from a Giant Eagle
12 definition standpoint. So you can define policies
13 and procedures however you want. We had
14 procedures documented.

15 When we went to get our DEA license, we had
16 to have procedures documented. Otherwise, they
17 would not have approved. The DEA approved our
18 facility to be licensed. We had to have the
19 required documentation and procedures put together
20 on paper, and we showed them to the DEA officers
21 who came in and inspected the facility prior to
22 using it. And all of our procedures matched up
23 with the Controlled Substances Act.

24 Q. And these are in writing?

25 A. They were in writing.

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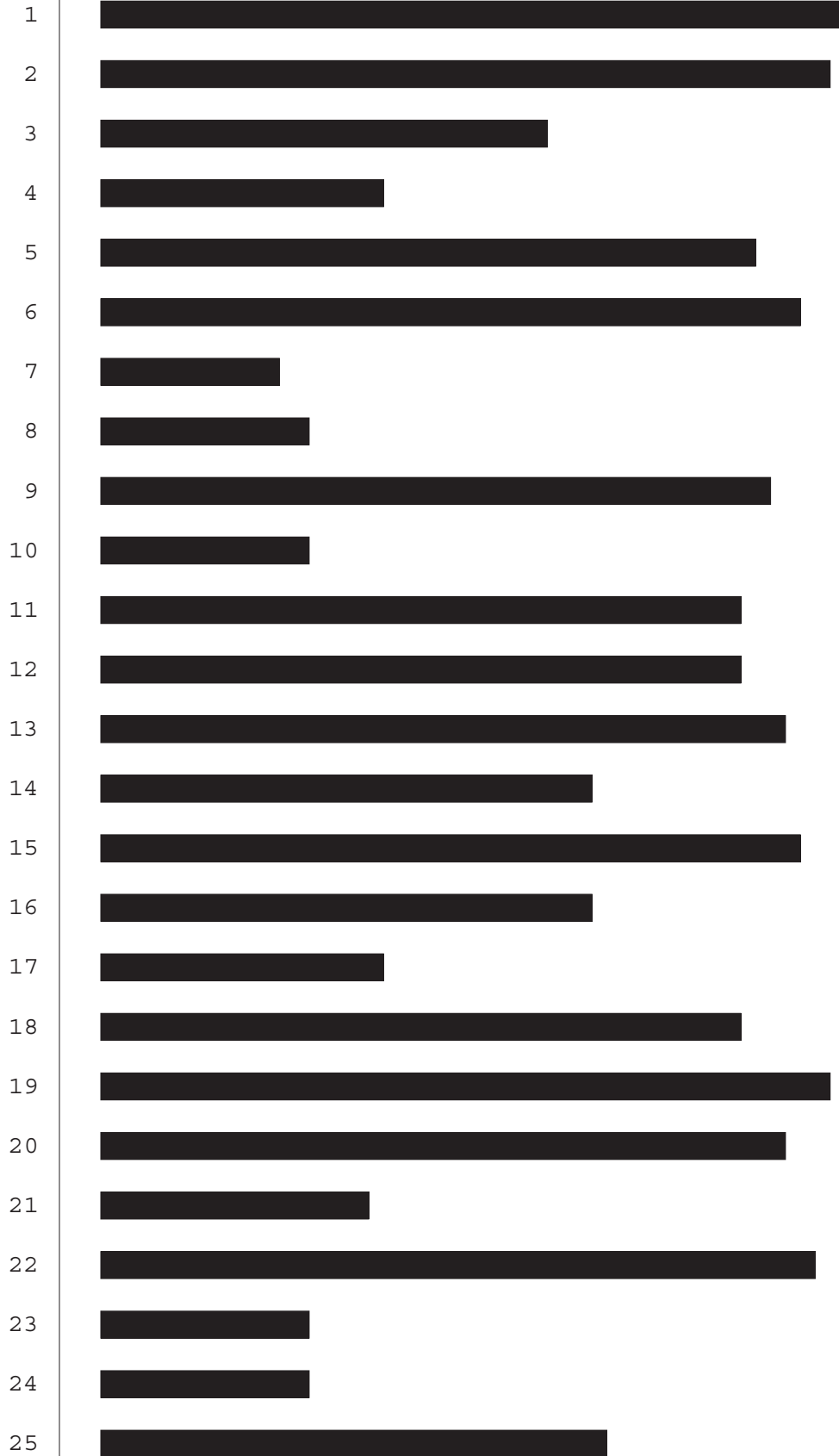
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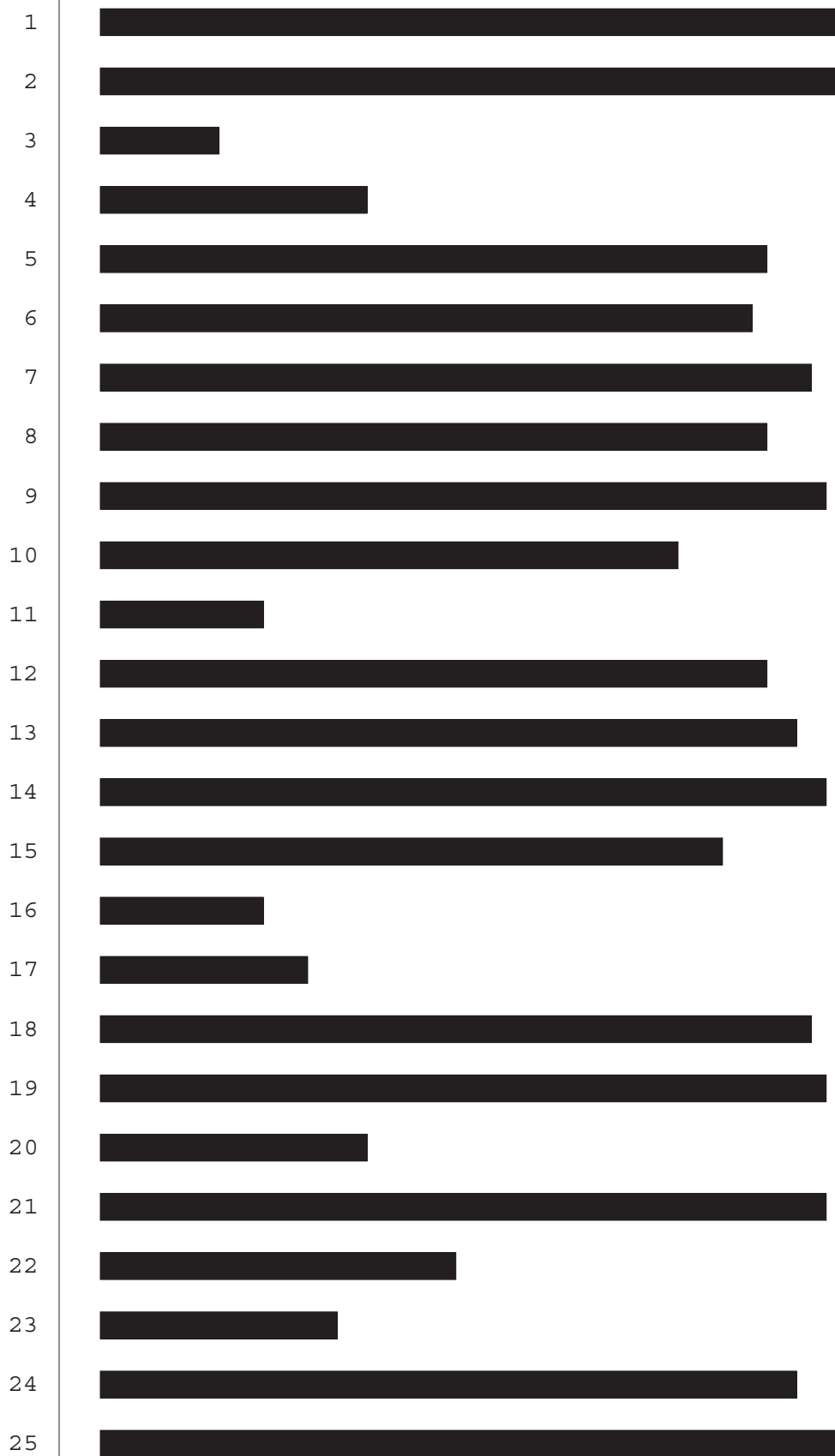
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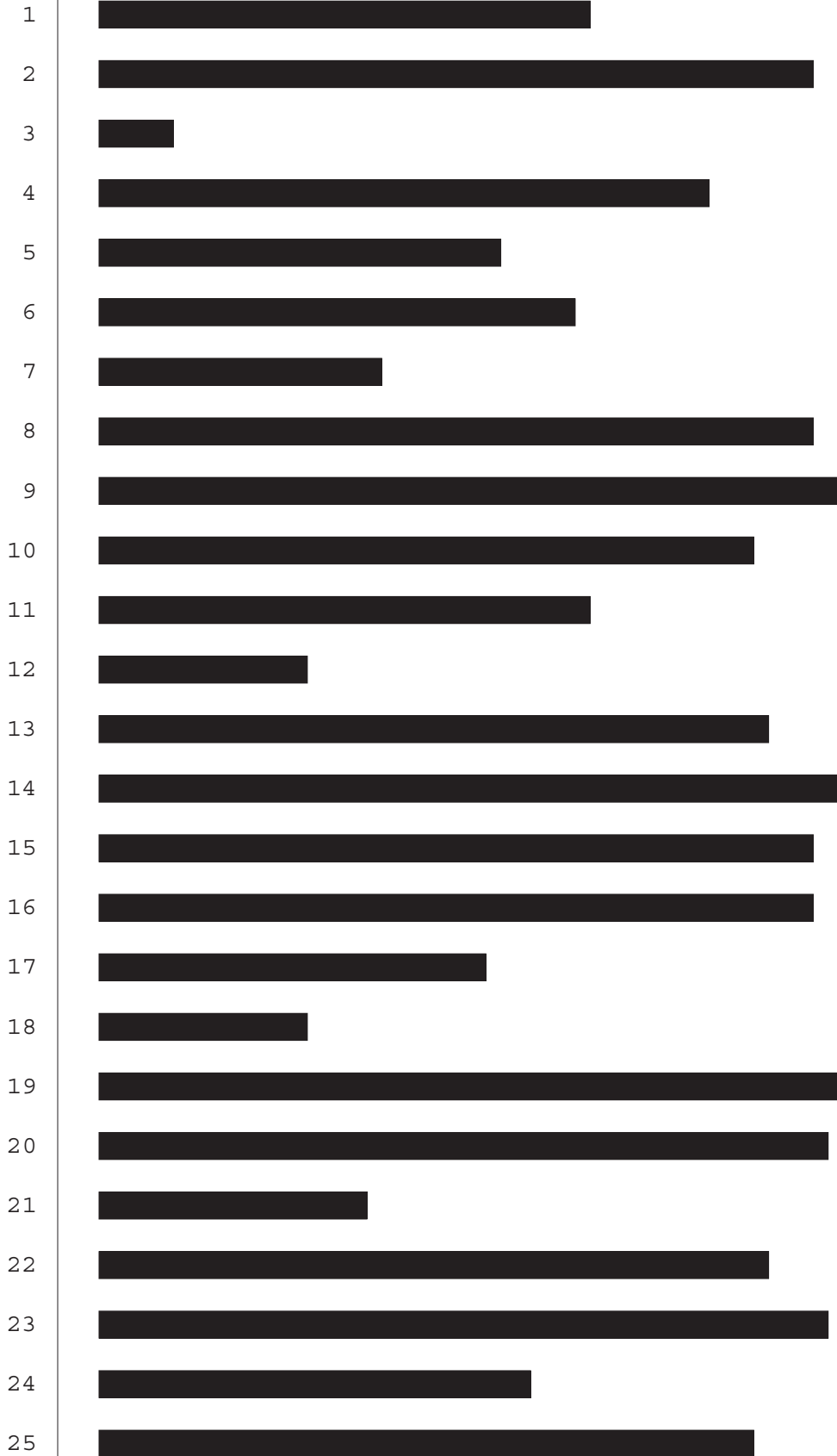
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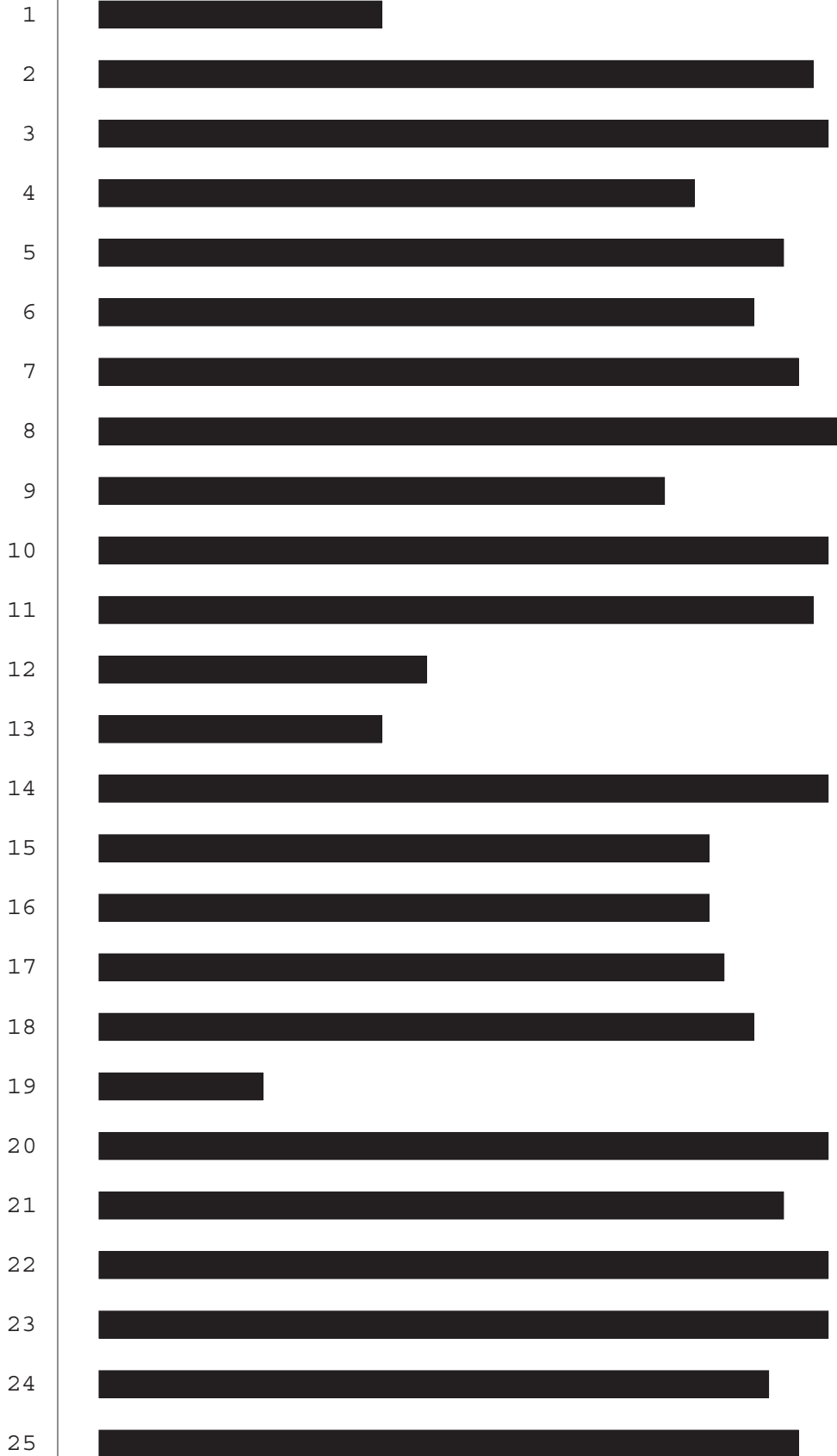
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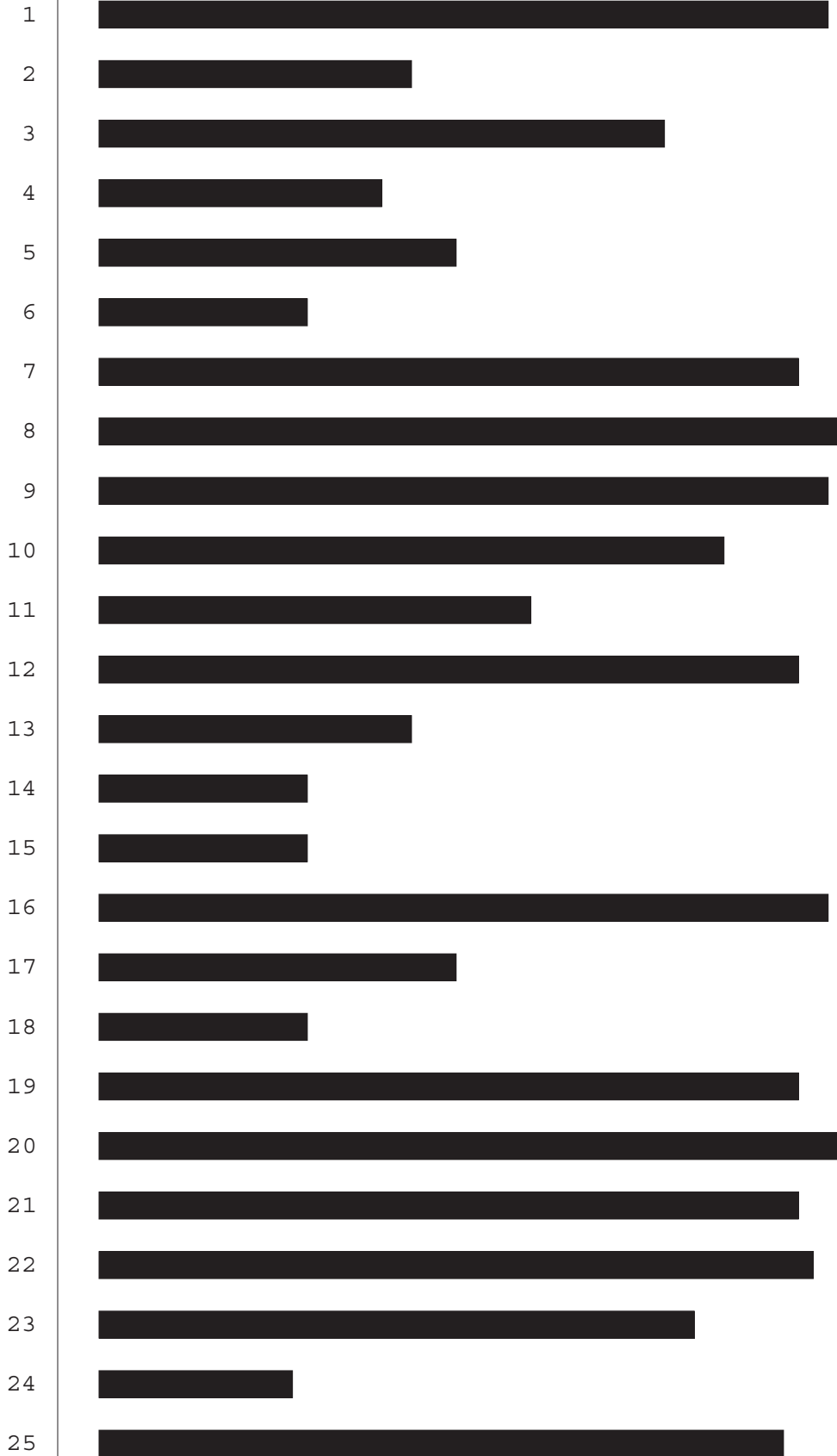


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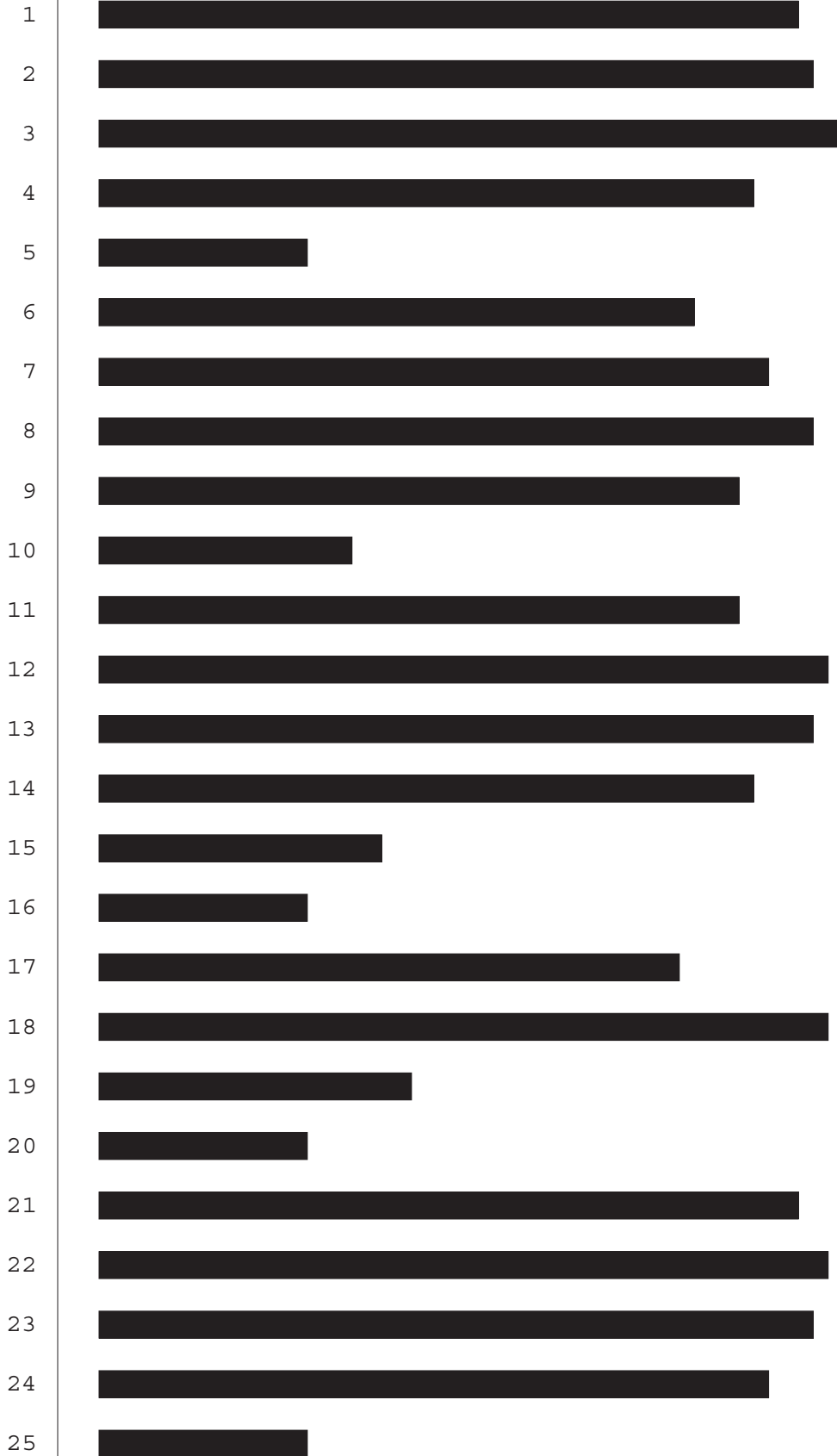
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1 THE WITNESS: Can you restate the
2 question?

3 BY MR. ROTTINGHAUS:

4 Q. Sure. Let me back it up. We've been
5 looking at an email from August of '15. But I'm
6 going to kind of focus a little bit off of that
7 date.

8 From 2009 to 2014, at some point in time, did
9 you become aware that relying on thresholds of
10 shipments of hydrocodone combination products from
11 the HBC warehouse was not sufficient to satisfy
12 the duties of a distributor under the Controlled
13 Substances Act?

14 MR. BARNES: Object to form.

15 THE WITNESS: I mean, there's nothing in
16 the regulations, to my knowledge, that
17 specifically say thresholds. I can't answer that
18 question because my thought process wasn't like
19 that. Our system didn't only rely on thresholds
20 anyway. It included other safeguards and
21 measures. So I would say nothing was new to my
22 knowledge of the process.

23 BY MR. ROTTINGHAUS:

24 Q. Let's talk about what your system did
25 use. You said it didn't just rely on thresholds.

1 Tell us what your system did rely on to identify
2 any suspicious orders between 2009 and 2014.

3 A. We have a number of systems, had a
4 number of systems in place at the time. Some of
5 those are around general reporting and monitoring
6 movement reports on a daily basis. Some included
7 safeguards where unusual quantities were caught
8 prior to going out.

9 So if anything was a large order, outside of
10 the norm, it was immediately stopped and red flags
11 were thrown out. Questions were asked as far as
12 the validity of that order, and it wasn't released
13 until it was investigated.

14 The stores had a process to check in the
15 orders bottle by bottle. They had other
16 safeguards in place around safe dispensing of
17 controlled substances to the patients, looking for
18 other red flags as far as the dispensing process.
19 So those are some of the things. I can't recall
20 every piece of it.

21 Q. I wrote down a couple of things that I
22 want to ask you about in follow-up.

23 First of all, are you talking about the
24 timeframe of 2009 to 2014 when you're referencing
25 these different processes in place?

1 A. Yes. We always had processes in place
2 from the beginning. It was mainly modifications
3 along the way to the process.

4 Q. And these processes as you described
5 them, were they put in place in an attempt to make
6 sure that HBC warehouse was complying with its
7 responsibilities as a distributor under the
8 Controlled Substances Act?

9 MR. BARNES: Object to form.

10 THE WITNESS: We were always complying
11 with the rules. We were trying to make our
12 process better, more efficient. So it wasn't a
13 matter of are we compliant. It was a matter of is
14 our process working the most efficient way it can.
15 Examples of that is removing some of the manual
16 components to that, automating it with reporting
17 or other systems.

18 BY MR. ROTTINGHAUS:

19 Q. Were these processes you've just talked
20 about, monitoring movement reports, managing
21 unusual quantities, stopping them, those processes
22 we were just talking about, were they put in place
23 as part of an effort to design and operate a
24 system to disclose orders of controlled substances
25 that might end up being suspicious orders?

1 MR. BARNES: Object to form.

2 THE WITNESS: My answer would be that
3 they were put in place to meet the requirements of
4 the Act. So if that's what was in the Act, that's
5 part of the reason why they were put in place.

6 BY MR. ROTTINGHAUS:

7 Q. When you say the Act, you're talking
8 about the Controlled Substances Act?

9 A. Controlled Substances Act, yes.

10 Q. Do you know -- well, first of all, let
11 me ask you this with respect to that. You said
12 monitoring movement reports?

13 A. Yes.

14 Q. In preparing for this deposition, have
15 you seen one of those reports?

16 A. I mean, I saw them years ago, but I have
17 not seen any movement reports in preparation for
18 this.

19 Q. Are these the reports that are also
20 called daily control reports?

21 A. I don't believe those were -- I mean, we
22 had -- basically we had buyer reports, for
23 example. So they were just reports that were
24 printed out daily. I might have a stack of them
25 on my desk. It would show you daily movement,

1 weekly movement, monthly movement, things like
2 that.

3 Q. Were you personally tasked with the
4 responsibility to review the daily movement
5 reports to identify any movements of suspicious
6 quantities of substances, or was there some other
7 place to assist you in that?

8 MR. BARNES: Object to form.

9 THE WITNESS: There were other systems.
10 I can't remember which reports that would flag
11 certain things. The one I was speaking of was
12 just a general second level safeguard where I can
13 see if any movements were out of line from
14 previous history.

15 But there were other reports -- I can't think
16 of the names of those reports -- that were out
17 there that would look at movements of therapeutic
18 categories of drugs specifically.

19 BY MR. ROTTINGHAUS:

20 Q. So you at this point in time, from 2009
21 to 2014, sometime during that timeframe, you
22 became a senior director of pharmacy?

23 A. Yes.

24 Q. And when you became the senior director
25 of pharmacy, were you overseeing all 200 something

1 Giant Eagle stores?

2 A. No, not the stores. I was overseeing
3 all of corporate functions at that point. So
4 Anthony Mollica was still in charge of the
5 operations of the stores. I was responsible for
6 the contract management of any vendors, the
7 managed care side, which is the insurance
8 contracting piece of it kind of rolled up
9 underneath me as well. So it was more at that
10 level.

11 Q. And I just want to make sure I
12 understand. During this timeframe from 2009 to
13 2014, you're telling us that one of the processes
14 in place was you would get a sheet of daily
15 movement of all of your medications, including
16 controlled substances, and you would personally
17 look through that to try to identify any orders
18 that seemed out of the ordinary?

19 A. We had buyers.

20 Q. First of all, am I correct in what I
21 said? If I'm not, just correct me.

22 A. Oh, no, I mean, I didn't daily look at
23 those reports. We had buyers in place at that
24 time. We had a category manager in place at the
25 time. So they would use that to generate their --

1 as part of their reordering process. So when we
2 reviewed that, they could also see any out of the
3 norm patterns in that process.

4 Q. And you're saying you're one of the
5 individuals that was reviewing and tasked and
6 responsible for reviewing for any out of the norm
7 patterns?

8 A. I didn't. When you mentioned senior
9 director of pharmacy, no, I was not reviewing the
10 reports at that time.

11 Q. And that would have been between 2005 --

12 A. Right.

13 Q. I'm sorry. 2007 and 2012.

14 A. No senior director of pharmacy.

15 Q. 2012 to 2014.

16 A. Correct.

17 Q. You were not doing so?

18 A. I was not reviewing the daily reports
19 back at that point.

20 Q. Who was reviewing the daily reports at
21 that time, if anyone?

22 A. Kris Remas would have been reviewing
23 reports as part of -- again, our daily process was
24 to review the reports.

25 Q. Now, when those reports would get

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1 THE WITNESS: Not necessarily.

2 BY MR. ROTTINGHAUS:

3 Q. So you don't think it would be a good
4 idea?

5 A. I don't think -- looking back, I don't
6 know if it would be a good idea or a bad idea. We
7 didn't have any issue with it. We were very good
8 with the process. Never had any large orders slip
9 through. So I think the procedure that we had in
10 place was sufficient.

11 Q. You say you never had any large orders
12 slip through. What did you consider to be a large
13 order?

14 A. It depended on the product. You
15 couldn't make a determination broadly. It was
16 what's the normal for this. That would kind of
17 classify as, you know, whatever the
18 classifications are as far as a large order.

19 Q. You understood that as early as 2008,
20 some companies, some distributors were using
21 thresholds at least to help them identify some
22 orders that might be out of the ordinary?

23 MR. BARNES: Object to form. Lack of
24 relevance.

25 THE WITNESS: Timeline-wise I'm not

1 certain, but I do remember threshold emails coming
2 from McKesson.

3 BY MR. ROTTINGHAUS:

4 Q. And actually threshold criteria started
5 to get set for HBC as of 2013; is that right?

6 A. There was a report created, an automated
7 report created at that time.

8 Q. Whose idea was it to create that report?

9 A. I'm not sure who came up with the idea,
10 but it was a team that kind of worked on how do we
11 come up with a process to do that.

12 Q. Why was the team trying to come up with
13 a process to identify thresholds at HBC warehouse?

14 A. We were trying to enhance and improve
15 our process along the way.

16 Q. The process of identifying orders that
17 might be in excess of ordinary?

18 A. It would be targeting not orders
19 specifically. Thresholds don't catch one order.
20 Thresholds capture patterns of orders. So one
21 large is not, unless it exceeds the threshold, is
22 not going to be caught by the threshold.

23 Q. What if it exceeded the threshold, what
24 did you expect to happen?

25 A. The order would be investigated.

1 Q. How would it be investigated?

2 A. There would be a number of people that
3 would find out what was going on with that store
4 in particular that would do -- down at the PDL
5 level, district leader level investigating what
6 was going on at that particular store.

7 Q. So this level started below you where
8 the investigation would start?

9 A. Below me and the operations department
10 would go and look at what's going on in the store.

11 Q. That's what I want to understand, is
12 what your system was, who the people were that
13 were eyeing these threshold reports and then
14 reporting to whoever they reported to if there
15 were orders exceeding thresholds and then what due
16 diligence was done.

17 A. So the overall security efforts of the,
18 you know -- to meet the needs of this particular
19 act or regulation encompassed many different parts
20 of the whole process. So it would be -- we looked
21 at ourselves as a self distributor. We had owned
22 the product, and we're basically handing it off to
23 another location within our chain.

24 Unlike a wholesaler, which is selling to a
25 new customer, a different customer, self

1 distribution, we knew our customers because they
2 were us. So we were very familiar with our
3 customers. We knew exactly what was going on.
4 Each of these prescriptions were dispensed with a
5 valid prescription. So those were kind of the
6 added security measures that met the needs of the
7 requirement.

8 Q. Are you able to sit here under oath
9 today and tell us that every one of the
10 prescriptions that HBC warehouse filled were
11 filled with a valid prescription?

12 MR. BARNES: Object to form.

13 THE WITNESS: The HBC warehouse filled?

14 BY MR. ROTTINGHAUS:

15 Q. Yes.

16 A. You mean the product coming from HBC
17 warehouse?

18 Q. Yes.

19 A. I can't state, you know, something like
20 that.

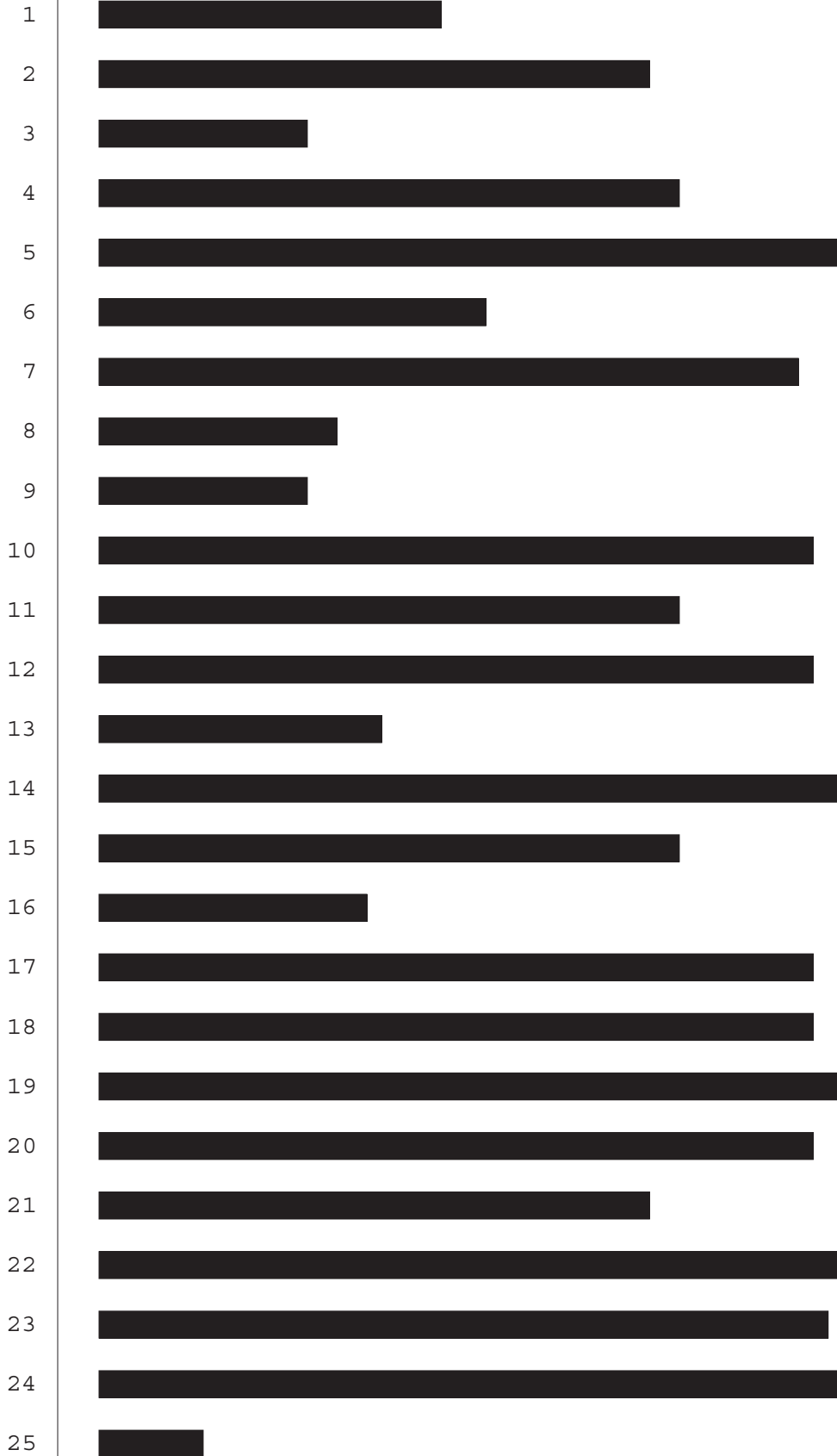
21 Q. I thought I heard you say that. I
22 understand that you can't say that. I'm just
23 wondering -- if you're able to say it, I wonder
24 how.

25 A. We act under the guise that our process

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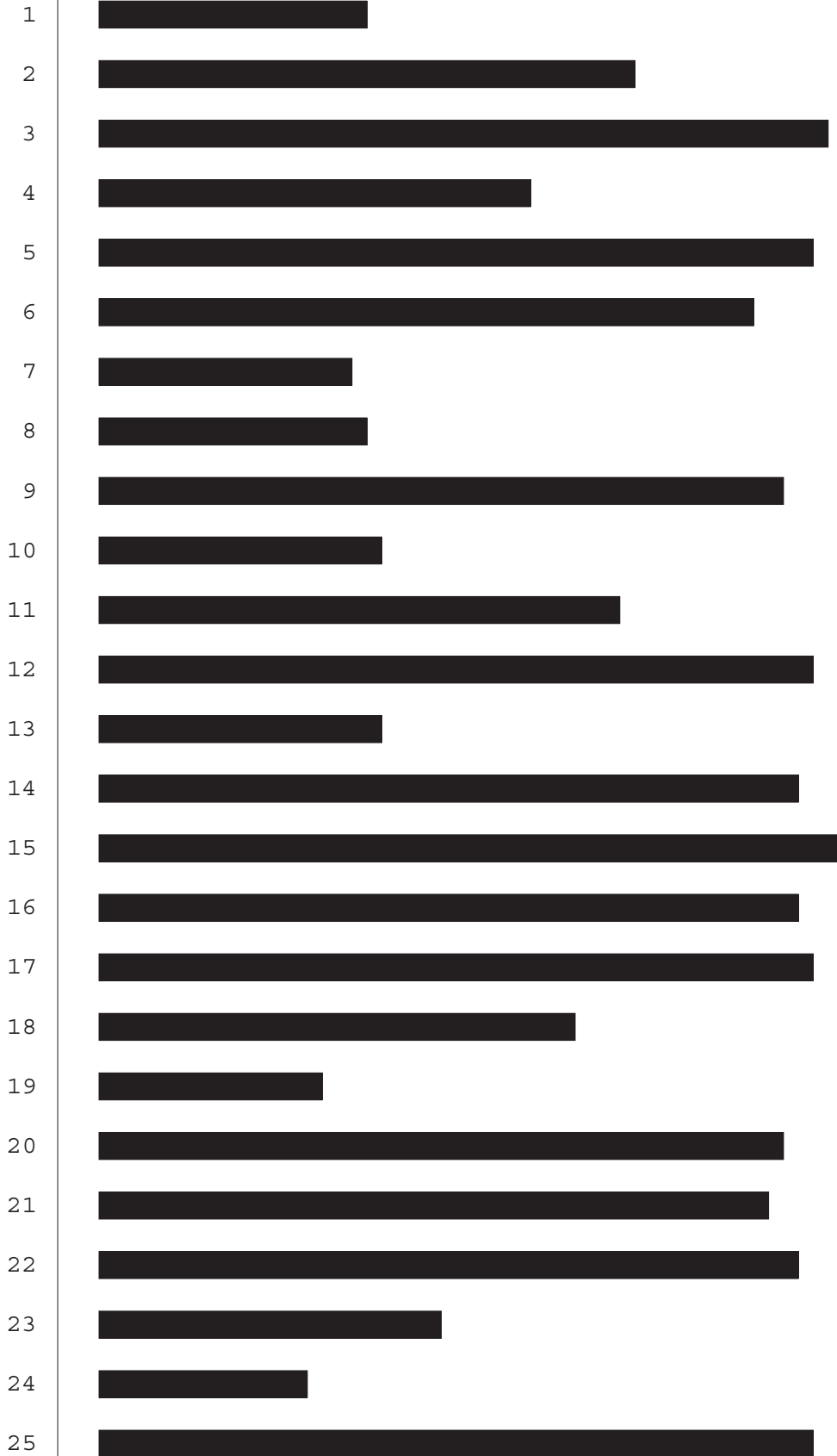
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1 A. No.

2 Q. You don't think written documentation of
3 an investigation is required or a good idea for a
4 store?

5 MR. BARNES: Object to form.

6 THE WITNESS: We followed whatever the
7 requirement of the DEA was in place. So there was
8 no record keeping requirements as part of the
9 provision. So it wasn't something that we had
10 done.

11 BY MR. ROTTINGHAUS:

12 Q. Do you think it's a good idea for a
13 company like HBC to document what steps it's
14 taking to attempt to comply with the law?

15 MR. BARNES: Object to form.

16 THE WITNESS: I haven't really thought
17 about it. I don't have an opinion on that.

18 BY MR. ROTTINGHAUS:

19 Q. So between 2009 and 2014, you never gave
20 any thought to whether if there is an
21 investigation taking place for an order that's
22 exceeding a threshold limit, we should document in
23 some way what steps we are taking to make sure
24 that it's not a suspicious order?

25 A. We had tight controls in place that

1 followed the full security measures of this, not
2 just 1301.74, but all of 1301. So this one small
3 subset was not our entire process.

4 So we were very confident and comfortable
5 that we had one of the best systems in place to
6 monitor it.

7 Q. What were the tight controls in place to
8 on a daily basis follow up and make sure that any
9 orders that were deemed to be in excess of
10 thresholds were not suspicious orders before they
11 got shipped? Tell me about that tight process.

12 A. So when you say they were suspicious
13 orders --

14 Q. Nope, I didn't. Let's listen to my
15 question. If I did, I apologize. I didn't mean
16 to.

17 What was this tight process you've just told
18 us about? Well, let me ask it this way: Would
19 you agree that in order for this process to be
20 tight, whenever there was an order that exceeded
21 the threshold limits, someone at HBC needed to
22 take some steps to find out why that order was
23 exceeding threshold limits?

24 MR. BARNES: Object to form. Calls for
25 speculation.

1 THE WITNESS: You're asking if someone
2 at HBC had to find out if it was a suspicious
3 order based on thresholds?

4 BY MR. ROTTINGHAUS:

5 Q. Do you believe they should have?

6 MR. BARNES: HBC or Giant Eagle?

7 MR. ROTTINGHAUS: HBC.

8 THE WITNESS: Well, HBC was -- the
9 reporting was all done at corporate level.

10 BY MR. ROTTINGHAUS:

11 Q. Well, wherever, let me ask you this: Do
12 you believe that in order to keep a tight process
13 in place -- I think you used the term we had a
14 tight process.

15 A. Um-hum.

16 Q. In order to maintain a tight process
17 between 2009 and 2014, don't you agree that it
18 would have been a good idea to document what steps
19 were being taken to follow up on any orders that
20 exceeded thresholds for hydrocodone combination
21 products?

22 MR. BARNES: Object to form. Asked and
23 answered.

24 THE WITNESS: I don't think -- I don't
25 see the benefit of documentation.

1 BY MR. ROTTINGHAUS:

2 Q. Would one benefit of the documentation
3 be the ability to show any regulatory body that
4 HBC did indeed take steps to maintain a system, to
5 implement, design and operate a system to disclose
6 the presence of suspicious orders?

7 A. When we opened HBC, we received our DEA,
8 we were inspected by the DEA. They came in. They
9 looked at all of our security features related to
10 this Controlled Substances Act, looked at all of
11 our processes.

12 Our security, according to them, fit all
13 requirements, all the needed necessary steps. We
14 were acting upon that. There was nothing in the
15 provision that said we had to keep documentation
16 for any period of time on any investigation.

17 We did our process. If there was any
18 suspicion come up, we investigated it thoroughly,
19 made our decision. And I can't even think of a
20 time where we -- maybe there was a couple, but not
21 that I can recall, an example when there was a
22 suspicious order that we actually defined. I'm
23 not saying it didn't happen, but I can't recall an
24 example.

25 MR. ROTTINGHAUS: Object and move to

1 strike as nonresponsive.

2 BY MR. ROTTINGHAUS:

3 Q. I'm going to ask you a question, and if
4 you can tell me "yes" or "no," I would appreciate
5 it. And if you can't, that's fine. Just let me
6 know that you can't. Okay?

7 A. Okay.

8 Q. And then you can explain why you can't.

9 Don't you think it would have been a good
10 idea between 2009 and 2014 for someone at either
11 Giant Eagle or HBC to document any steps that were
12 taken to follow up on any orders that exceeded
13 thresholds and to show what due diligence was done
14 to determine that they were not indeed suspicious
15 orders?

16 MR. BARNES: Objection. Asked and
17 answered I think at least twice.

18 BY MR. ROTTINGHAUS:

19 Q. "Yes" or "no," if you can. If not --

20 A. Do I think it would be a good idea?

21 Q. Yes.

22 A. No.

23 Q. If we look at this policy, Exhibit 24,
24 if we can go to the second page of it -- actually,
25 forgive me. Let's go back to the first page, the

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10 MR. ROTTINGHAUS: That's all I have.

11 MR. BARNES: Then I'll just jump right
12 in.

13 THE VIDEOGRAPHER: The time is 2:21.

14 (Recess from 2:21 p.m. to 2:27 p.m.)

15 THE VIDEOGRAPHER: On the record 2:27.

16 EXAMINATION

17 BY MR. BARNES:

18 Q. Good afternoon, Mr. Carlson. I have
19 some follow-up questions.

20 You were asked a lot questions today by
21 plaintiffs' counsel about the so-called suspicious
22 order regulation 1301.74(b).

23 A. Yes.

24 Q. But you were never shown the 1301.71,
25 which is the security -- I'll tell you it's the

1 security requirement regulation.

2 Are you familiar with that regulation?

3 A. I have reviewed it before.

4 Q. That regulation requires applicants and
5 registrants to provide effective controls and
6 procedures to guard against theft and diversion of
7 controlled substances.

8 Does that refresh your recollection?

9 A. Yes.

10 Q. Did Giant Eagle in the entire time that
11 you were there meet this regulation?

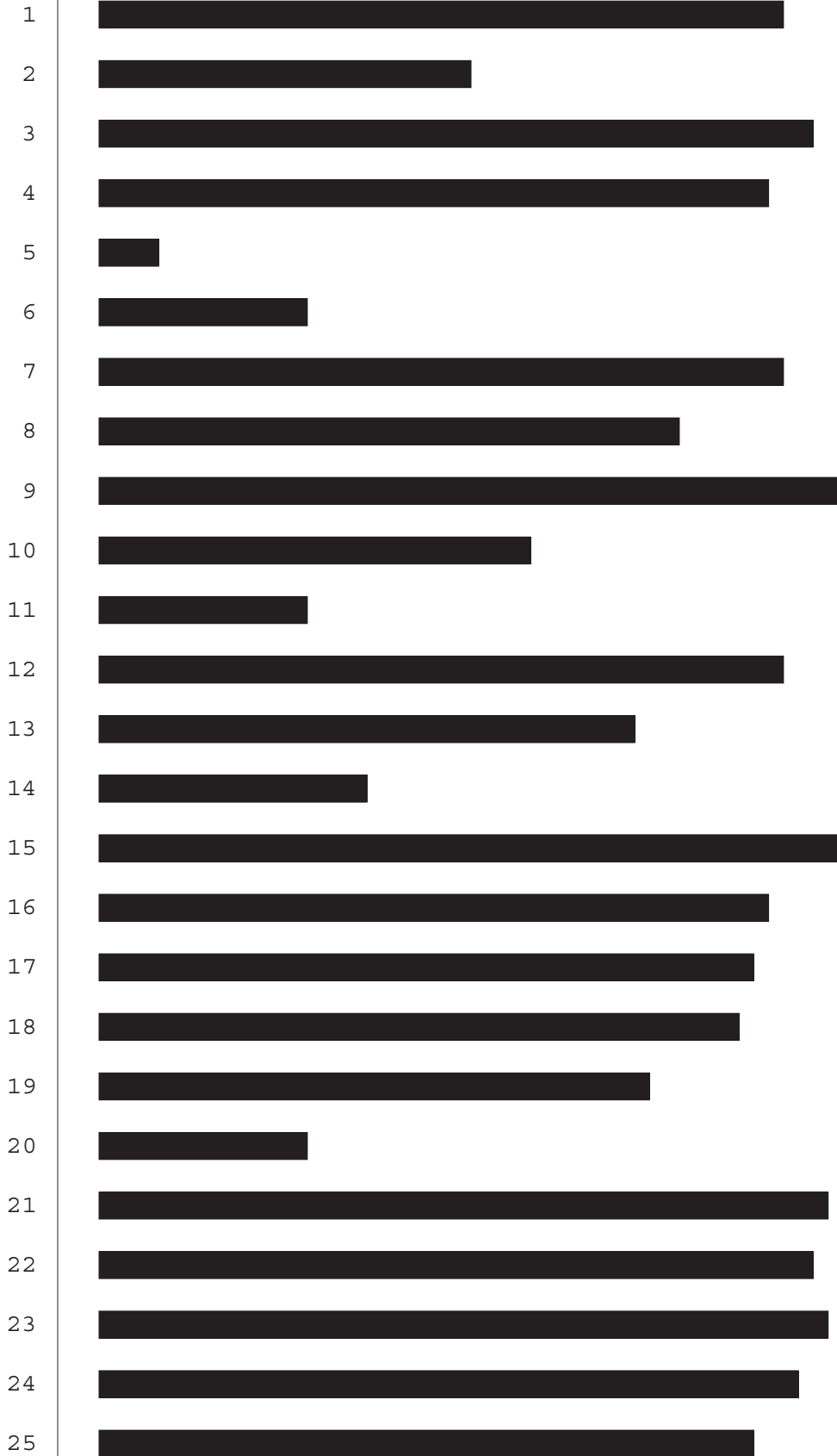
12 MR. ROTTINGHAUS: Objection. Form;
13 insufficient foundation.

14 THE WITNESS: Yes.

15 BY MR. BARNES:

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1 did you understand that to include an overall
2 evaluation of the adequacy of the controls at the
3 HBC and store levels?

4 A. Yes.

5 Q. Do you understand that the regulation
6 that you were shown by plaintiffs' counsel is just
7 one small aspect of the overall security
8 requirement?

9 A. Correct, yes.

10 Q. And do you understand that 1301.74
11 requires that HBC operated a system to disclose
12 suspicious orders?

13 A. Yes.

14 Q. Did you ever understand it to require
15 any type of formulaic or threshold system?

16 A. No.

17 Q. At the warehouse level, I just want to
18 explore what you do understand. You mentioned
19 cages, things of that nature.

20 Were these control IIIs, IVs, and Vs kept in
21 locked cages?

22 A. Yes, per the DEA requirements of
23 specifically around the cage.

24 Q. You said the DEA actually reviewed the
25 HBC security system before it opened and started

1 distributing control IIIs, IVs, and Vs?

2 A. Yes, before they approved our DEA
3 license.

4 Q. And did they come in from time to time
5 to reaudit and inspect?

6 A. Yes.

7 MR. ROTTINGHAUS: Objection. Leading.

8 BY MR. BARNES:

9 Q. At any time, did the DEA ever advise HBC
10 that there was anything lacking in their control
11 system?

12 MR. ROTTINGHAUS: Objection.
13 Foundation.

14 THE WITNESS: There was nothing pointed
15 out within our security measures that didn't meet
16 the requirements.

17 BY MR. BARNES:

18 Q. Did Giant Eagle ever distribute to
19 internet pharmacies?

20 A. No.

21 Q. By Giant Eagle I'm including HBC.

22 A. No, we did not.

23 Q. But you've also told us that you don't
24 really know the details -- you said the pickers
25 were regulated in terms of access to the cages; is

1 that right?

2 A. Yes.

3 Q. But the detailed procedures of how they
4 actually did their picking and the forms they
5 filled out, that wasn't part of your job?

6 A. No, it was not.

7 Q. Were inventories conducted at HBC?

8 A. Yes.

9 Q. Regular inventories?

10 A. Yes.

11 Q. Was the HBC warehouse overseen by Giant
12 Eagle's internal audit and accounting department?

13 MR. ROTTINGHAUS: Objection. Leading.

14 THE WITNESS: Yes.

15 BY MR. BARNES:

16 Q. You were asked a lot of questions today
17 about the development of a so-called SOM system in
18 2013 or 2014. Do you recall that?

19 A. Yes.

20 Q. Was that threshold system I'll call it,
21 was that developed because there was any view that
22 the currently existing controls that you describe
23 were viewed as inadequate in any way?

24 A. No. They were put together as an
25 enhancement to the current process.

1 Q. And that process, that threshold process
2 began in or about 2013?

3 A. About per my recollection.

4 Q. And were enhancements made to that
5 process over time?

6 A. Yes.

7 Q. Are you familiar with the CSOS system?

8 A. Yes.

9 Q. Is that one of the enhancements?

10 A. CSOS was a system that just assisted in
11 ordering CII through at the time it was the
12 wholesaler process, but it was -- it helped us --
13 it was an enhancement for ordering CIIs, so from
14 that perspective.

15 Q. Are you familiar with Supply Logics?

16 A. Yes.

17 Q. Was that an enhancement to the threshold
18 system?

19 A. Yes.

20 Q. What did Supply Logics allow you to do?

21 A. Supply Logics had a couple components to
22 it that could allow us to audit and monitor. So
23 it would -- I can't remember. I'm trying to
24 visualize what this report looked like, but it
25 would -- it basically would pull out -- allow us

1 to evaluate, investigate stores that were -- you
2 know, that stuck out in some fashion.

3 Q. At the pharmacy level you talked a
4 little bit about some of the controls at that
5 level.

6 I just want to ask you generally. Were all
7 of the pharmacies staffed by licensed and trained
8 pharmacists?

9 A. Yes.

10 Q. Were they staffed by trained
11 technicians?

12 A. Yes.

13 Q. Were all of those individuals trained
14 with respect to diversion?

15 A. There was a component of the training --
16 I don't know specifically, but I know there were
17 some discussions in the training around that.

18 Q. Were there policies and procedures,
19 written policies and procedures in place at the
20 pharmacy level that assisted the pharmacists and
21 technicians with respect to filling appropriate
22 prescriptions?

23 A. Yes.

24 Q. Are you familiar with the DEA pharmacist
25 manual?

1 MR. ROTTINGHAUS: Objection. Relevance.

2 THE WITNESS: I may have seen it. I

3 can't recall.

4 BY MR. BARNES:

5 Q. Do you recall if that was located at the

6 pharmacies or accessible by the pharmacies?

7 A. Yeah. That should have been at each

8 location, I believe.

9 Q. Did Giant Eagle have controlled

10 substance dispensing guidelines?

11 A. There were guidelines around controlled

12 substances, yes.

13 Q. Did it include things like red flags,

14 things to look out for before dispensing and

15 filling a prescription?

16 A. Yes.

17 MR. ROTTINGHAUS: Are you talking about

18 at the pharmacy level or HBC level?

19 MR. BARNES: Pharmacy level.

20 BY MR. BARNES:

21 Q. Are you familiar with the so-called

22 OARRS system?

23 A. Yes.

24 Q. What is that?

25 A. It's an Ohio system to monitor

1 prescription dispensing across the whole state.

2 Q. Is that something to your knowledge the
3 Giant Eagle pharmacists would access when filling
4 a prescription as necessary?

5 A. Yes, as required.

6 MR. ROTTINGHAUS: I didn't want to
7 interrupt. I'm interposing an objection on
8 relevance grounds.

9 BY MR. BARNES:

10 Q. Did the pharmacists or do the pharmacies
11 report their transactions to the DEA? I think you
12 already testified to that concerning the ARCOS
13 system.

14 A. The ARCOS was one way. We also reported
15 dispensings through like the OARRS system and all
16 that. That was done at corporate level, but all
17 that information about the stores came from
18 corporate that was provided.

19 Q. Did Giant Eagle have written fraud,
20 waste and abuse guidelines and procedures that
21 were at the pharmacies?

22 A. Yes.

23 Q. The record keeping at the pharmacies,
24 are you familiar with the term controlled
25 substance boxes that maintain records?

1 A. Yes.

2 Q. Is that something when you were a PDL
3 you had to make sure every pharmacy complied with?

4 A. The boxes either came out like right
5 when I was going onto my other position, the
6 physical boxes that you're talking about. It
7 was -- I didn't physically do that as a PDL. I
8 think it came out just as I went on to my next
9 position.

10 Q. But in your next position, did you learn
11 what those were?

12 A. Yes.

13 Q. What were they for generally?

14 A. Just to kind of keep everything in one
15 place around controlled substances.

16 Q. Would those include DEA forms, records
17 of invoices and transactions on controlled
18 substances?

19 A. DEA 222 forms, invoices, anything
20 regarding controlled substances.

21 Q. At the pharmacy level, were the
22 controlled substances handled any differently than
23 any other drug?

24 A. Were they handled differently? Yes.

25 Q. Were they kept in a secure location?

1 A. Any of the Schedule II were kept in a
2 locked location that only the pharmacist had
3 access to.

4 Q. And who could fill a controlled
5 substance II level prescription at the pharmacies?
6 Could a tech do it, or was it a pharmacist
7 required?

8 MR. ROTTINGHAUS: Objection. Relevance.

9 THE WITNESS: A pharmacist was required
10 to do that process.

11 BY MR. BARNES:

12 Q. And how were incoming orders of
13 controlled substances handled? Were there special
14 procedures for those?

15 A. Yeah. We had formalized processes or
16 procedures drawn up on how to receive an order,
17 and it even broke out controlled substances and
18 how to handle those orders specifically.

19 Q. Were those orders checked against
20 invoices and immediately logged into inventory?

21 A. Yes.

22 Q. Were there regular and then perpetual
23 inventories of all controlled substances?

24 A. Yes. There were Schedule IIIs through
25 Vs were part of our perpetual. The CIIs were done

1 in a manual fashion. So we're talking 2009 to
2 '14. It became part of the perpetual throughout
3 that time period.

4 Q. You mentioned monthly narc audits. Was
5 that for all controlled substances?

6 A. Yes.

7 Q. And were there also annual controlled
8 substance inventories on top of the monthly narc
9 audits?

10 MR. ROTTINGHAUS: Objection. Leading.

11 THE WITNESS: I'm sorry. Say that
12 again.

13 BY MR. BARNES:

14 Q. In addition to the monthly narc audits,
15 were there regular annual inventories?

16 MR. ROTTINGHAUS: Same objection.

17 THE WITNESS: Yeah. We were required to
18 do an every two-year inventory. We actually did
19 ours on an annual basis.

20 BY MR. BARNES:

21 Q. While controlled substance prescriptions
22 were being filled, were there special accounting
23 procedures employed to maintain control over every
24 pill?

25 A. Yes.

1 MR. ROTTINGHAUS: Objection. Leading.

2 BY MR. BARNES:

3 Q. Did the Ohio -- not only Ohio, but did
4 the state Boards of Pharmacy come into the
5 pharmacies on a random and unannounced basis and
6 perform surprise inspections on a routine basis?

7 A. Yes.

8 Q. Were there ever any problems that you
9 can recall involving controlled substances or
10 opioids?

11 A. Nothing specific to an inspection
12 regarding those products.

13 Q. And you were a PDL for a while?

14 A. Yes.

15 Q. And you had a region where you regularly
16 visited all your stores?

17 A. Yes.

18 Q. Were all of the pharmacies supervised by
19 a PDL in some way?

20 A. Yes.

21 Q. And did they regularly visit the store
22 and conduct audits from time to time?

23 A. Yes.

24 Q. And did that include controlled
25 substance procedures?

1 A. Yes.

2 Q. Did the PDL supervise training at the
3 pharmacies?

4 A. Not directly supervise, but ensure that
5 all team members within that unit were trained.

6 Q. Did the PDLs work with law enforcement
7 and the Board of Pharmacy to deter diversion and
8 prosecute criminals?

9 MR. ROTTINGHAUS: Objection. Leading.

10 THE WITNESS: Yes.

11 BY MR. BARNES:

12 Q. Did the PDLs exercise red flag awareness
13 training in the pharmacies?

14 A. Yes.

15 Q. Would the PDLs have an opportunity to
16 observe while in these pharmacies suspicious
17 activity, such as long lines out the door, things
18 of that nature?

19 A. Yes.

20 Q. And I think you said when you were a
21 PDL, you would assist from time to time with
22 threshold increases if the stores needed them;
23 right?

24 A. When I was a PDL -- that was after I was
25 a PDL when I was actually having the PDLs do the

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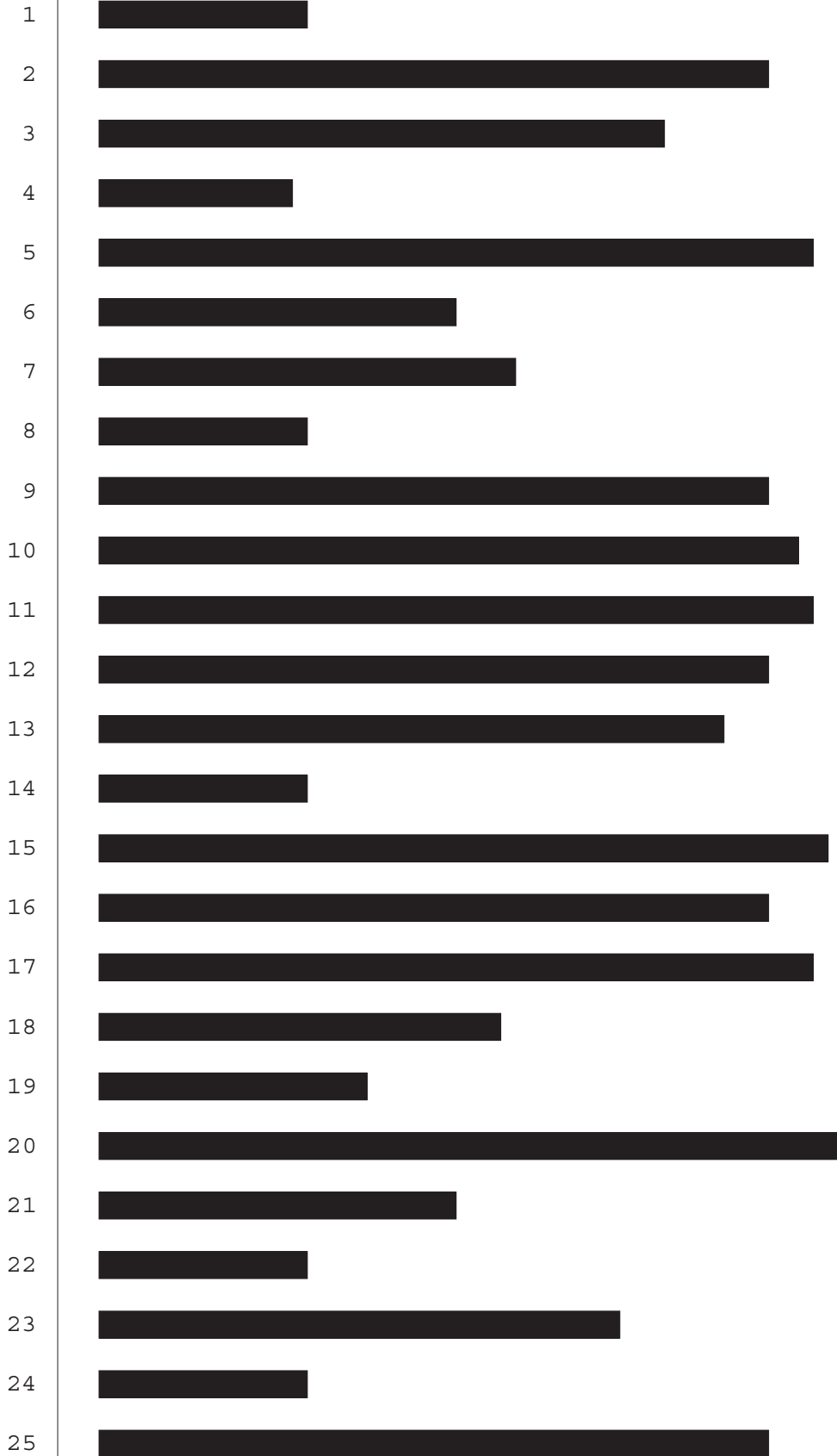
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1 RE-EXAMINATION

2 BY MR. BARNES:

3 Q. Just one follow-up question. After the
4 threshold daily report was instituted in or about
5 October of '13, did it reveal anything with
6 respect to the adequacy of the controls that were
7 already in place?

8 A. Based on --

9 MR. ROTTINGHAUS: Let me make a quick
10 objection. Insufficient foundation.

11 But go ahead.

12 THE WITNESS: Based on the limited
13 number of suspicious orders that were generated
14 afterwards, I would say, no, it didn't really add
15 a whole lot to the process. But, again, we looked
16 at it as an enhancement to what we had in place,
17 an extra stopgap.

18 BY MR. BARNES:

19 Q. Did it indicate one way or the other
20 whether the controls in place were adequate?

21 A. I would evaluate it --

22 MR. ROTTINGHAUS: Objection. Leading.

23 THE WITNESS: I would evaluate it to
24 show that we did have adequate controls in place
25 from the beginning.

1 BY MR. BARNES:

2 Q. Even after you instituted -- you
3 enhanced it with the threshold system?

4 A. Yes.

5 MR. BARNES: Nothing further.

6 RE-EXAMINATION (Continued)

7 BY MR. ROTTINGHAUS:

8 Q. Prior to 2014, was there ever a system
9 in place where anyone at HBC was instructed when
10 they had an order that exceeded thresholds to ask
11 any particular questions of the pharmacy to find
12 out and do a little more due diligence as to why
13 the order was exceeding threshold?

14 A. When you say threshold, HBC wasn't
15 looking at threshold information. They would look
16 at unusual orders, being a large size, and that's
17 where they would ask the questions from.

18 Q. And was there ever at any point in time
19 to your knowledge any documented instruction to
20 anyone at or on behalf of HBC as to what specific
21 questions they should be asking of pharmacies when
22 they have an order that they thought was
23 extraordinarily large?

24 A. Their process was to notify myself or
25 someone else at corporate to do the investigation

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MR. ROTTINGHAUS: Thank you.

MR. BARNES: Thank you.

THE VIDEOGRAPHER: Off the record 3:04.

(Whereupon, at 3:04 p.m., the taking of
the instant deposition ceased.)

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF ALLEGHENY) SS:

3 C E R T I F I C A T E

4 I, Ann Medis, Registered Professional
5 Reporter, Certified Livenote Reporter and Notary
6 Public within and for the Commonwealth of
7 Pennsylvania, do hereby certify:

8 That GREGORY CARLSON, the witness whose
9 deposition is hereinbefore set forth, was duly
10 sworn by me and that such deposition is a true
11 record of the testimony given by such witness.

12 I further certify the inspection,
13 reading and signing of said deposition were not
14 waived by counsel for the respective parties and
15 by the witness.

16 I further certify that I am not related
17 to any of the parties to this action by blood or
18 marriage and that I am in no way interested in the
19 outcome of this matter.

20 IN WITNESS WHEREOF, I have hereunto set
21 my hand this 11th day of January, 2019.

22
23 _____
Notary Public
24
25

COMMONWEALTH OF PENNSYLVANIA) E R R A T A
COUNTY OF ALLEGHENY) S H E E T

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In all other respects, the transcript is true and correct.